

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

WOLD, et al,

Petitioners,

v.

CITY OF POULSBO,

Respondent,

**CASE NO. 10-3-0005c**

**FINAL DECISION AND ORDER**

**I. SYNOPSIS**

On December 2, 2009, the City of Poulsbo adopted Ordinance No. 2009-14, updating the Poulsbo Comprehensive Plan following a three year review of elements within the previous Comprehensive Plan.

Petitioners Janet Wold, Carlotta Cellucci, Kitsap Citizens for Responsible Government (KCRP), as well as Molly and John Lee filed timely Petitions for Review. KCRP subsequently withdrew from the case. The Petitioners challenged various elements of Ordinance 2009-14 under the Growth Management Act including; Public Participation, Environment and Critical Areas, Natural Resource Lands, Urban Growth and Population, Alteration of Land Use Powers, Buildable Lands Analysis, Consistency and Coordination, Capital Facilities, and Economic Development. Petitioners contended the City had made numerous errors in procedure, policy development and implementation with the passage of the 2009 Comprehensive Plan.

With this Final Decision and Order, the Board found all of the Petitioners' claims to be without merit. The Board found that the City acted within its legislative discretion in the development and adoption of the 2009 Comprehensive Plan.

1 The Board acknowledges the citizen involvement of the pro se Petitioners. Seldom does the  
2 Board observe the level of commitment by the public as demonstrated in this case.  
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## 4 **II. PROCEDURAL BACKGROUND**

### 5 PETITIONS FOR REVIEW

6 On February 8, 2010, the Board received two Petitions for Review (PFR). The first PFR,  
7 filed by Janet Wold, Carlotta Cellucci, and Kitsap Citizens for Responsible Planning<sup>1</sup>  
8 (collectively, Wold or Wold Petitioners), was assigned Case No. 10-3-0004.  
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10 The second PFR, filed by John Lee and Molly Lee (collectively, Lee or Lee Petitioners), was  
11 assigned Case No. 10-3-0005. Both of these PFRs challenge the City of Poulsbo's  
12 Ordinance 2009-14 which adopted the 2009 Poulsbo Comprehensive Plan. With its  
13 February 16, 2010 Notice of Hearing and Consolidation, the Board consolidated these two  
14 PFRs into Case No. 10-3-0005c.  
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### 16 MOTIONS

17 On May 11, 2009, the Board issued two significant orders – an Order on Petitioners' Motion  
18 to Supplement and an Order on Poulsbo's Dispositive Motion. The Board's Order on  
19 supplementation addressed numerous documents the Petitioners sought to be added, with  
20 the Board both denying documents and admitting documents. The Board's Order related to  
21 dismissal addressed nine motions presented by the City, including dismissal of the PFR in  
22 its entirety. The Board granted, in part, these motions, and included a listing of the amended  
23 issue statement within this Order.  
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25 On June 22, 2009, just one day before the Hearing on the Merits, the City filed Objections  
26 and a Motion to Strike various arguments set forth in the Petitioners' Reply Briefs. The  
27 Board's resolution of this motion is provided in Section V – Preliminary Matters.  
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<sup>1</sup> On March 10, 2010, the Board received email communication from KCRP withdrawing from this matter.

1 HEARING ON THE MERITS

2 The Hearing on the Merits (HOM) was held on June 23, 2010, in Poulsbo, Washington.  
3 Board members Dave Earling and Margaret Pageler were present; Board Member Earling  
4 presiding. Petitioners appeared *pro se* – Janet Wold, Carlotta Cellucci, John Lee, and Molly  
5 Lee. The City of Poulsbo was represented by James Haney.  
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7 **III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,**  
8 **AND STANDARD OF REVIEW**

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10 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and  
11 amendments to them, are presumed valid upon adoption.<sup>2</sup> This presumption creates a  
12 high threshold for challengers as the burden is on the petitioners to demonstrate that any  
13 action taken by the City of Poulsbo is not in compliance with the GMA.<sup>3</sup>  
14

15 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating  
16 noncompliant plans and development regulations.<sup>4</sup> The scope of the Board's review is  
17 limited to determining whether the City has achieved compliance with the GMA only with  
18 respect to those issues presented in a timely petition for review.<sup>5</sup> The GMA directs that the  
19 Board, after full consideration of the petition, shall determine whether there is compliance  
20 with the requirements of the GMA.<sup>6</sup> The Board shall find compliance unless it determines  
21 that the City of Poulsbo's action is clearly erroneous in view of the entire record before the  
22 Board and in light of the goals and requirements of the GMA.<sup>7</sup> In order to find the City's  
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28 <sup>2</sup> RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable  
29 development regulations] comprehensive plans and development regulations, and amendments thereto,  
30 adopted under this chapter are presumed valid upon adoption.

31 <sup>3</sup> RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the  
32 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this  
chapter is not in compliance with the requirements of this chapter.

<sup>4</sup> RCW 36.70A.280, RCW 36.70A.302

<sup>5</sup> RCW 36.70A.290(1)

<sup>6</sup> RCW 36.70A.320(3)

<sup>7</sup> RCW 36.70A.320(3)

1 action clearly erroneous, the Board must be “left with the firm and definite conviction that a  
2 mistake has been committed.”<sup>8</sup>

3  
4 In reviewing the planning decisions of cities and counties, the Board is instructed to  
5 recognize “the broad range of discretion that may be exercised by counties and cities” and  
6 to “grant deference to counties and cities in how they plan for growth.”<sup>9</sup> However, the City  
7 of Poulsbo’s actions are not boundless; their actions must be consistent with the goals and  
8 requirements of the GMA.<sup>10</sup>

9  
10 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate  
11 that the challenged action taken by the City of Poulsbo is clearly erroneous in light of the  
12 goals and requirements of the GMA.  
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#### 14 **IV. BOARD JURISDICTION**

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16 The Board finds that the Petitions for Review were timely filed, pursuant to RCW  
17 36.70A.290(2). The Board finds that Petitioners have standing to appear before the Board,  
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22 <sup>8</sup> *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD*  
23 *District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al*  
24 *v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,  
25 497-98, 139 P.3d 1096 (2006)

26 <sup>9</sup> RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be  
27 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the  
28 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements  
29 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities  
30 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that  
31 while this chapter requires local planning to take place within a framework of state goals and requirements, the  
32 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and  
implementing a county's or city's future rests with that community.

<sup>10</sup> *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the  
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the  
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The  
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give  
the [jurisdiction's] actions a “critical review” and is a “more intense standard of review” than the arbitrary and  
capricious standard. *Id.* at 435, Fn.8.

1 pursuant to RCW 36.70A.280(2).<sup>11</sup> The Board finds that it has jurisdiction over the subject  
2 matter of the petitions pursuant to RCW 36.70A.280(1).<sup>12</sup>

## 3 4 V. PRELIMINARY MATTERS

### 5 A. City's Motion to Strike

6 On June 22, 2010, the City of Poulsbo filed Objections and Motion to Strike Portions of the  
7 Reply Briefs filed by the Petitioners. Since this motion was related to the reply briefs, at the  
8 HOM the Board allowed the Petitioners time to file a response to the City's Motion. These  
9 responses were received on June 28, 2010. The following provides the basis of the City's  
10 Motion and the Board's resolution.

#### 11 12 13 Motions to Strike: Lee

- 14 1. Strike arguments on Legal Issue 9, page 5 related to arbitrary nature of the "open  
15 space" designation and lack of direction to developers as new argument. Motion to  
16 strike is **granted**.
- 17 2. Strike arguments under Issues 10, 11, 12. The facts raised in Legal Issues 10, 11,  
18 and 12 were not raised in the Prehearing Brief. Motion to Strike is **granted**.
- 19 3. Strike arguments on Page 11 (lines 10-24) and 12 (lines 1-2). Petitioner cite to specific  
20 issues in County Wide Policies in Planning Policies E and F not previously  
21 introduced. Motion to Strike is **denied**.
- 22 4. Strike argument under Issue 32. Alleged unconstitutional vagueness of RCW  
23 36.70A.160 is raised for the first time. Motion to Strike is **granted**.

#### 24 Motion to Strike: Wold, et al

- 25 1. Strike arguments concerning lack of notice from the "10/7/09" comprehensive plan  
26 hearing (actually held on 10/14/09) on page 3 of Reply Brief. Motion to Strike is  
27 **denied**.
- 28 2. Strike argument on Pages 4 (lines 10-25) and 5 (lines 1-21) concerning the notice of  
29 certain planning commission meetings under Issues 1, 2, and 3, contending new  
30 specific arguments. Motion to Strike is **denied**.

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32 <sup>11</sup> This conclusion is supported by the Board's May 11, 2010 Order on Dispositive Motions which sought, and  
in part granted, dismissal of issues based on allegations that the Petitioners lacked standing.

<sup>12</sup> This conclusion is also supported by the Board's May 11, 2010 Order on Dispositive Motions which sought,  
and in part granted, dismissal of issues based on subject matter jurisdiction.

3. Strike arguments concerning the input of the Parks and Recreation Commission found on pages 5 (line 21-25) 6, and 7 (line 1) under Issues 1, 2, and 3, contending all new argument. Motion to Strike is **granted**.
4. Strike all arguments concerning Petitioner's conversations with the U.S. Navy on page 8 (lines 22-25) under Issues 1, 2, and 3, concerning new facts not in the record. Motion to Strike is **granted**.
5. Strike all argument regarding the support or lack thereof for "transit", concerning whether "transit" is related to "multi-modal". Motion to Strike is **denied**.
6. Strike all arguments that the City did not follow its CAO procedures in designating FWHCA's found on page 24 (lines 23-25), page 25 (lines 1-20) under Issue 8, page 33 (lines 22-25) under Issues 30 and 31, and page 34 (lines 1-2) under Issue 30 and 31, concerning an all new argument. Motion to Strike is **granted**.
7. Strike all argument concerning habitat for black bear, river otter, skunk, opossum, coyote, deer and big cats on page 25 (lines 13-19) under Issue 8, on page 30 (lines 6-12) under Issue 16, and on page 33 (lines 17-22) under Issue 27 concerning the mention of these species for the first time. Motion to Strike is **granted**.
8. Strike all argument that the City is not promoting a variety of residential densities and housing types within the City in violation of GMA on page 28 (lines 2-6), with no stated reason to strike by the City. Motion to Strike is **denied**.

## **B. Official Notice**

Within its briefing and at the HOM, the City of Poulsbo requested that the Board take official notice of three documents: the June 2009 Low Impact Development (LID) Guidance Manual;<sup>13</sup> the 1994 City of Poulsbo Comprehensive Plan;<sup>14</sup> and the Six-Year Transportation Improvement Plan (TIP), starting in 1994 and specifically including each of the TIPs from 2006 to 2015.<sup>15</sup> Petitioners, although not objecting at the HOM, did file written objections.<sup>16</sup>

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<sup>13</sup> Exhibit 1 to the City's Response Brief (Wold)

<sup>14</sup> Exhibit 2 to the City's Response Brief (Lee)

<sup>15</sup> Exhibit 2 to the City's Response Brief (Lee)

<sup>16</sup> Wold Response to City's Exhibits, filed June 28, 2010; Lee Response to City's Added Exhibits, filed June 28, 2010.

1 Therefore, pursuant to WAC 242-02-660, at the HOM the Board granted the City's request  
2 and further stated that both parties could utilize these documents.<sup>17</sup> These documents will  
3 be referenced as City Exhibit 1 – LID manual and City Exhibit 2 – 1994 Comp Plan and Six-  
4 Year TIPs.

### 6 **C. Post-Hearing Supplementation Briefing**

7 On July 7, 2010, the Court of Appeals Division II issued its decision in the matter of  
8 *Suquamish Tribe v. Central Puget Sound Growth Management Hearings Board*, Docket No.  
9 39017-5-II. This decision related to the Board's holding in *Suquamish Tribe, et al v. Kitsap*  
10 *County*, Case No. 07-3-0019c. On July 9, 2010, the Board received correspondence from  
11 the City of Poulsbo requesting the opportunity to submit supplemental briefing in order to  
12 address the ruling of the Court. The Board granted this request,<sup>18</sup> allowing both the City and  
13 the Petitioners to submit briefing.<sup>19</sup> These briefs were received by the Board on July 19,  
14 2010.

### 17 **D. Withdrawn and Abandoned Issues**

18 Issue 37, which reflected Lee Issue 4.32 and set forth a violation of RCW 36.70A.130(4)(a),  
19 was expressly withdrawn by Lee.<sup>20</sup> Issue 31, which reflected Lee Issue 4.27 and set forth a  
20 violation of RCW 36.70A.010, was also expressly withdrawn by Lee.<sup>21</sup> Thus, these issues  
21 are dismissed from this matter.

23 Throughout its response briefs, the City of Poulsbo asserts the Petitioners have abandoned  
24 various aspects of their issues by failing to brief them.<sup>22</sup> WAC 242-02-570(1) states that the  
25 failure of a party to brief an issue shall constitute abandonment of the unbrieffed issue.

26 Although this was raised at the HOM, the Board reserved ruling on the issue of  
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30 <sup>17</sup> At the HOM the Board also noted that it was taking official notice of the documents in their entirety, not just  
specific excerpts as provided by the City.

31 <sup>18</sup> WAC 242-02-810 permits post-hearing materials only upon authorization of the Board.

32 <sup>19</sup> The parties were notified via a July 9, 2010 E-mail from the Board's Executive Assistant.

<sup>20</sup> Lee HOM Brief, at 33; City Response Brief at 14

<sup>21</sup> Lee HOM Brief, at 22; City Response Brief at 21

<sup>22</sup> City Response Brief at 18, 23, 32, 44

1 abandonment until this FDO. Whether or not the Petitioners have abandoned issues, in full  
2 or in part, will be addressed within the context of the issue itself.

## 3 4 **VI. ISSUES AND DISCUSSION**

### 5 *The Challenged Action*<sup>23</sup>

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7 In January 2007, the City of Poulsbo began the process of updating its Comprehensive  
8 Plan, the first broad and deliberate review of its Comprehensive Plan since its initial  
9 adoption in 1994. This process involved not only public review but also the technical  
10 analysis required to complete the update. The process began with a community visioning  
11 which included a survey questionnaire, neighborhood conversation meetings, and visioning  
12 workshops. Based on the information gathered through these initial efforts, the City and its  
13 consultants commenced the technical analysis and drafting of documents for distribution.  
14 Joint workshops were also held with the Planning Commission and City Council to consider  
15 policy direction. In January 2009, a Draft 2009 Comprehensive Plan was released to the  
16 public. During the year that followed, the City conducted joint workshops with the Planning  
17 Commission and City Council and held open houses, public meetings, and public hearings –  
18 all of which culminated in the enactment of Ordinance 2009-14, adopting the 2009 City of  
19 Poulsbo Comprehensive Plan.  
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22 The Petitioners were active participants during the adoption process and their PFRs set  
23 forth numerous issues alleging various violations of the GMA. Their issues range from GMA  
24 violations based on public participation to critical areas to urban growth area planning to  
25 capital facilities to property rights. The Board consolidated not only the PFRs but, after  
26 allowing for a restatement of the issues, many related issues were consolidated and the  
27 issues were organized within a subject matter format. This FDO addresses the Petitioners'  
28 issues within this framework.  
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<sup>23</sup> This background information is based on the briefing of all of the parties.

1           **A. PUBLIC PARTICIPATION**

2   Petitioners set forth several issues related to public participation, as denoted by the Board's  
3   Prehearing Order, these issues are:

4           *Did the City of Poulsbo, by adoption of Ordinance 2009-14:*

5           **Issue 1:** *Fail to utilize citizen participation as required by RCW 36.70A.020(11) by*  
6           *not encouraging the direct involvement of citizens in the planning process, such*  
7           *as citizens' advisory or stakeholders' groups, and by failing to ensure coordination*  
8           *between communities and jurisdictions, such as Naval Base Kitsap?*

9           **Issue 2:** *Fail to comply with RCW 36.70A.130 (2)(a) and 36.70A.140 by not*  
10          *providing appropriate opportunity for public comment, without establishing and*  
11          *broadly disseminating a public participation program by providing early and*  
12          *continuous participation and, to the extent any such program existed, follow the*  
13          *program consistently during development of its Comprehensive Plan (CP)?*

14          **Issue 3:** *Violate the public participation notice provisions of RCW 36.70A.035 in*  
15          *its Comprehensive Plan and Public Participation Plan (CP Chapter 11) by*  
16          *providing information only in the difficult-to-find-and read legal notices in the*  
17          *newspaper and on a clipboard at the post office and public library, not notifying*  
18          *public/private groups, and by not notifying individuals who requested notification?*

19          **Applicable Law**

20   The GMA contains several provisions addressing citizen involvement in comprehensive land  
21   use planning which combine to create a strong foundation for public participation which  
22   should not be compromised. In fact, the Board has long held that public participation is a  
23   “hallmark” which serves as the very foundation for GMA planning.<sup>24</sup> The key provisions,  
24   which Petitioners include within their issue statements, are RCW 36.70A.020(11), .035, and  
25   .140. Also cited by Petitioners is RCW 36.70A.130, which outlines the procedures for  
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30   <sup>24</sup> See *City of Poulsbo et al v Kitsap County*, Case No. 92-3-0009c, Final Decision and Order at 36 (April 16,  
31   1993); *Vashon-Maury, et al v. King County*, Case No. 95-3-0008c, Compliance Order at 9-10 (Nov. 8, 2000).  
32   See also, *Panza v. City of Lacey*, WWGMHB Case No. 08-2-0028, Final Decision and Order, at 9-10 (Oct. 27,  
  2008)(Public participation is keystone of GMA); *Citizens for Good Governance et al v. Walla Walla County*,  
  EWGMHB Case No. 05-1-0013, Final Decision and Order (June 16, 2006)(Public Participation is the heart and  
  soul of GMA). In addition, see the Supreme Court's holding in *1000 Friends v. McFarland*, 159 Wn.2d 165,  
  179 (2006)(GMA has created extensive provision for citizen involvement).

comprehensive plan amendments thereby amplifying and refining the broader public participation process requirements of .140. These provisions provide:

RCW 36.70A.020(11): Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

RCW 36.70A.130(2)(a) [In relevant part]: Each County and City shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70(A)035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year.....

RCW 36.70A.140 [In relevant part]: Comprehensive Plans--Ensure Public Participation. Each county or city under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation....

RCW 36.70A.035 [In relevant part]: Public Participation—Notice provisions.

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations...

### Position of the Parties

Wold asserts the City of Poulsbo provided an inadequate and flawed public participation plan throughout the City's review and update of its Comprehensive Plan process. From the beginning of the review in 2007 to the passage of Ordinance No. 2009-14, Wold contends the public was not adequately included in the development of the revised Comprehensive Plan.<sup>25</sup> Wold contends that during the first two years of the review, no specific long term Public Participation Plan (PPP) was in place as one was not adopted until January 21, 2009. Wold argues they raised concerns about a lack of public participation at public meetings and hearings during the planning process.<sup>26</sup>

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<sup>25</sup> Wold HOM Brief, at 4-11

<sup>26</sup> Wold HOM Brief at 4-5

1 Wold complains that there were no citizen committees formed at the beginning of the  
2 process and no two-way conversations were allowed between various permanent City  
3 Committees such as the Parks and Recreation Committee and the Planning Commission.<sup>27</sup>  
4 According to Wold, the only means of permitted citizen communication was via written  
5 comment or three minute verbal comment during public meetings.<sup>28</sup> Wold further asserts  
6 that no discussion was allowed at Public Comprehensive Plan Workshops.<sup>29</sup>  
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8  
9 Wold contends that notice given to the public regarding the planning process was difficult for  
10 the public to follow.<sup>30</sup> Wold argues there was little newspaper coverage and the notice that  
11 was provided was limited to legal notices in the newspaper and posted notices at City Hall,  
12 the library, and post office.<sup>31</sup> Wold asserts that while the City contends they circulated  
13 emails to 245 people as requested by those citizens, the emails were focused to city  
14 employees, city council members, and the mayor. Because the emails were titled "planning  
15 information", Wold alleges citizens would have deleted them without opening them.<sup>32</sup>  
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17  
18 The City of Poulsbo states that the planning process for the 2009 Comprehensive Plan was  
19 divided into three phases.<sup>33</sup> Phase 1 was an opportunity for the public to participate in a  
20 community visioning exercise, culminating in July 2007.<sup>34</sup> The City notes that during a  
21 subsequent eighteen months period, staff developed the draft plan and worked with the  
22 Planning Commission for review and refinement.<sup>35</sup> Then, after formally issuing the Draft  
23 Comprehensive Plan, the City points out, in January 2009, it began the final two phases  
24 began – Phase 2 and Phase 3.<sup>36</sup> According to the City, these multiple phases provided an  
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27 <sup>27</sup> Wold HOM Brief at 5

28 <sup>28</sup> Wold HOM Brief at 5-6

29 <sup>29</sup> Wold HOM Brief at 5-6

30 <sup>30</sup> Wold HOM Brief at 6

31 <sup>31</sup> Wold HOM Brief at 6

32 <sup>32</sup> Wold HOM Brief at 8

33 <sup>33</sup> City Response Brief to Wold at 2

34 <sup>34</sup> City Response Brief to Wold at 2-3

35 <sup>35</sup> City Response Brief to Wold at 3-4

36 <sup>36</sup> City Response Brief to Wold at 2, 5

1 opportunity for the public to participate through public hearings on the draft plan, before final  
2 passage.<sup>37</sup>

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4 The City asserts that in Phase I, which began in January 2007, citizens had the opportunity  
5 to participate in a number of ways: including a *Short Course on Local Planning*, provided by  
6 the then known as Washington State Department of Community, Trade and Economic  
7 Development; through the hiring of Berk and Associates (Berk) to lead a public outreach  
8 program for the 2009 Comprehensive Plan, known as "*Project Poulsbo: Our City, Our*  
9 *Future*;" the establishment of the *Project Poulsbo* web page; two "community conversations"  
10 organized by Berk; and the distribution of a community questionnaire, made available  
11 through the web site and distribution at public buildings throughout the community.<sup>38</sup>

12  
13 During the next eighteen months, the City asserts, the staff working with the vision,  
14 principles and key community goals developed in Phase I, developed a variety of plan  
15 segments for the Comprehensive Plan including: the Comprehensive Sewer Plan, a  
16 Comprehensive Stormwater Management Plan, a hand count of building permits and  
17 occupancy issued by the City from 2002-2008, land capacity analysis, and a water supply  
18 agreement with Kitsap Public Utility District No. 1.<sup>39</sup> With this work completed, the City  
19 asserts, Phases 2 and 3 of the plan were put in motion.  
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21  
22 On January 21, 2009, the City issued the Poulsbo 2009 Draft Comprehensive Plan and at  
23 the same time adopted Resolution 2009-03, establishing a Public Participation Plan.<sup>40</sup> Over  
24 the next twelve months, the City states the City Council and Planning Commission held over  
25 25 public meetings, workshops as well as four public hearings, during which the City  
26 received valuable feedback, culminating with the passage of the challenged ordinance,  
27 Ordinance 2009-14, in December 2009.<sup>41</sup>  
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<sup>37</sup> City Response Brief to Wold at 2  
<sup>38</sup> City Response Brief to Wold at 3-4  
<sup>39</sup> City Response Brief to Wold at 4-5  
<sup>40</sup> City Response Brief to Wold at 5  
<sup>41</sup> City Response Brief to Wold at 5-6

1 In their Reply Brief, Wold argues that a number of the City's efforts were flawed and did not  
2 provide the level of public participation needed for the City to achieve the quality level the  
3 City claims.<sup>42</sup> Wold reasserts that no public participation plan was put in place during Phase  
4 I of the public process pointing out "declaring that public participation requirements were  
5 met does not make it so".<sup>43</sup> Wold contends that a formal Public Participation Plan was not  
6 put into place until January 2009, two years after the Comp Plan review process began.<sup>44</sup>  
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8 Also in their Reply Brief, Wold points to examples of City shortsightedness and/or errors  
9 made in public notification and lack of the citizen's ability to actively participate. Examples  
10 noted by Wold include: the assertion that the City did not provide adequate detail in public  
11 notices for the twenty-five public workshops, joint public meetings, individual meetings and  
12 public hearings the City held;<sup>45</sup> and special meetings held by the Planning Commission and  
13 joint meetings between the Planning Commission and the Parks and Recreation  
14 Commission were posted only at City Hall, Post Office and Public Library and were not  
15 noticed in the newspaper, by email or by letter.<sup>46</sup>  
16  
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#### 18 Board Discussion and Analysis

19 One of the challenges that commonly comes before the Board in any GMA case is one of  
20 public participation. Citizens are busy in their everyday lives and rely on a variety of  
21 potential methods to follow their government - news articles, posting or mailing of public  
22 notices, email communication, and websites are but a few examples. Thus, in today's world  
23 the governmental body has a variety of tools available to notify the public of its activities. In  
24 this case, the Board has a few citizens who followed the development of the updated 2009  
25 Poulsbo Comprehensive Plan very closely. The Board also has a City that used a variety of  
26 tools to work with and attempt to keep the public notified in the public process.  
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31 <sup>42</sup> Wold Reply Brief at 1-10

<sup>43</sup> Wold Reply Brief at 1

<sup>44</sup> Wold Reply Brief at 1-2

<sup>45</sup> Wold Reply Brief at 3

<sup>46</sup> Wold Reply Brief at 4

1       • Public Participation Program

2 In February 2007, the City engaged a consultant to assist in the development of a public  
3 participation plan. In May–July of 2007 the City launched Phase I of an impressive attempt  
4 to engage the citizens in participating in developing the future vision of the City. Entitled  
5 “*Project Poulsbo: Our City, Our Future*”, the City used a variety of tools including: the  
6 *Project Poulsbo* web page, which linked to the City’s web page and was intended to be the  
7 repository of the development of the Comprehensive Plan; held two community  
8 conversation meetings to allow early community input; and provided a community  
9 questionnaire to illicit further feedback from the community.<sup>47</sup>

11  
12 While the Board finds the work of the City satisfactory during Phase I, the Petitioners appear  
13 to be correct in their assessment that while Phase I was underway, there was not a fully  
14 designed Public Participation Plan in place. The Petitioners are correct that RCW  
15 36.70A.140 requires the City to not only “establish” a public participation program but to  
16 “broadly disseminate” it and, that this program is to identify procedures providing for early  
17 and continuous public participation in the *development* and *amendment* of comprehensive  
18 plans. The Board can find no evidence in the record that a fully illustrative public  
19 participation plan was established or given to the public during Phase I.

21  
22 During the following eighteen months, from July 2007 to January 2009, the City worked on a  
23 draft of the Comprehensive Plan and a variety of updates that were needed to coincide with  
24 the plan development, including the Sewer Plan, the Stormwater Management Plan, Land  
25 Capacity Analysis and Development Trend Analysis. These updates were certainly work  
26 that needed to be accomplished before Phase 2 and Phase 3 could commence; however,  
27 during this update period, the Record does not demonstrate that a public participation plan  
28 had either been established, or if established, disseminated to the public.

30  
31  
32  

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<sup>47</sup> See e.g. City Exhibit 6 – Burke & Associates Agreement; City Exhibit 9 – May 2007 Press Release for  
Update including *Project Poulsbo* website and notice of questionnaire and visioning conversation.

1 Not until January 2009, with the issuance of the Draft Comprehensive Plan,<sup>48</sup> did the City  
2 Council approve Resolution 2009-03 which established the City's formal Public Participation  
3 Plan for Phase 2 of the update process.<sup>49</sup> The public participation plan provided for a variety  
4 of opportunities for the public to participate in the process over the following months,  
5 representing an extensive effort by the City.<sup>50</sup>  
6

7 While the Petitioners are critical of several issues along the way, the City did provide  
8 extensive outreach through numerous public meetings/workshops, at which many provided  
9 opportunity for public comment. Opportunity for written comment was made available  
10 through the web site or other email communication. And, at the end of Phase 2, several  
11 public hearings were held before the Planning Commission and City Council.  
12

13  
14 The dilemma for the Board is that while Phase 1 of the public outreach program was  
15 extensive in effort, it did not apparently include a fully laid out Public Participation Plan - a  
16 plan that would notify the public that over an eighteen month period the staff needed time to  
17 develop a draft plan and the supporting analysis and what to expect from a Phase 2 and  
18 Phase 3. The intent of "early and continuous" was not met. Yet the Board is convinced the  
19 public outreach during the Phase 2 and Phase 3 was much more than superficial. The City  
20 went to great effort to give the opportunity during those final two phases for the public to  
21 become involved. The public is not well served in remanding to the City over the deficiency  
22 cited above.  
23

24  
25 Perhaps the City would do well to better answer Board member Pageler's question at the  
26 Hearing on the Merits "My question is, does the City have a public participation process or  
27 policy that is your general one for land use processes and development regulations, and if  
28

29  
30 \_\_\_\_\_  
<sup>48</sup> City Exhibit 65

31 <sup>49</sup> City Exhibit 68

32 <sup>50</sup> City Exhibit 68 denotes such things as a community open house, meetings and workshops of the Planning Commission and City Council, and public hearings before the Planning Commission and City Council. This plan also provided information on how to submit written comments and where notices and information would be disseminated.

1 so, can you point to it in the code....” To which the City replied, “The City doesn’t have a  
2 general one which is adopted to use in every case. It goes on a case–by-case basis as the  
3 need arises. In each case, it develops a public participation program as it did here.”<sup>51</sup> The  
4 City would do well to have a general public participation policy in their code that could be  
5 modified to adapt to each circumstance.  
6

7 The Board finds that while the City erred at the beginning of the public participation process  
8 by not establishing a public participation plan for the duration of the development and  
9 passage of the Comprehensive Plan, it took corrective action at the beginning of Phase 2  
10 with the passage of Resolution 2009-3, implementing a public participation plan.  
11

12  
13 • Citizen Advisory Groups

14 Wold asserts that citizens’ advisory groups should have been organized as the City had  
15 done in the previous update of the Comprehensive Plan. However, although it may be wise,  
16 Wold does not cite to, nor is the Board aware of, any requirement in the GMA that the City  
17 utilize advisory groups.  
18

19 • Opportunity for Public Comment

20 It is clear that Wold believes they did not have appropriate opportunities to comment during  
21 committee and City Council meetings; desiring more interactive conversation with the  
22 decision makers.<sup>52</sup> Yet throughout the process they acknowledge there was opportunity to  
23 address their concerns at many of the public meetings during three minute comment  
24 periods. The public did have impact on the shaping of the plan, as the City acknowledged in  
25 the Hearing on the Merits with comments that Wold’s input caused the City to do a hand  
26 recount of all building permits between 2002 and 2008, as a result of her questioned  
27  
28  
29  
30

31 <sup>51</sup> Hearing on the Merits transcript at 53.

32 <sup>52</sup> See the Board’s discussion of citizen comments in *Petso II v City of Edmonds*, CPSGMHB Case No. 09-3-0005, FDO (Aug. 17, 2009), at 17, citing *Keesling v King County*, CPSGMHB No. 05-3-0001, FDO (July 5, 2005), at 14.

1 accuracy of the City's population numbers.<sup>53</sup> In addition, the Record is replete with written  
2 and oral comments that were made by both Petitioners and other citizens.<sup>54</sup> Although Wold  
3 may feel slighted in the way in which interaction took place during the process, there is not a  
4 prescribed formula provided for in the GMA for public comment.<sup>55</sup>

5  
6 • Notice

7 While the Petitioners assert adequate notice was not provided to the public during the public  
8 participation process, the City utilized a variety of tools to notify the public of its  
9 comprehensive plan update, including those listed within RCW 36.70A.035.<sup>56</sup> However,  
10 36.70A .035 does not require a city to use all of the listed methods, rather it provides  
11 options. Compliance with this GMA provision is adequate even when only one method of  
12 notice is utilized.<sup>57</sup> Petitioners, in noting the participation elicited by the site-specific  
13 rezones, appear to contend individualized notice was required in this situation as well.<sup>58</sup>  
14 However, the GMA does not mandate individualized notice for actions such as Ordinance  
15 2009-14.<sup>59</sup>

16  
17  
18 • Naval Base Kitsap  
19  
20  
21

22 <sup>53</sup> HOM transcript at 47

23 <sup>54</sup> See e.g. Exhibit 85 (Feb 2009 Comments from Wold); Exhibit 121 (Minutes of April 2009 Planning  
24 Commission – Lee oral comments, Wold oral comments); Exhibit 183 and 229 (Comments from Suquamish  
25 Tribe); Exhibit 188 (Aug 2009 Comments from Wold); Exhibit 234 (Sept 2009 Comments from Lee); Lee  
26 Exhibit 2 (Petition for Secession from UGA);

27 <sup>55</sup> See e.g. *Robison, et al v. City of Bainbridge Island*, Case No. 94-3-0025c, FDO at 30 (May 3, 1995)(RCW  
28 36.70A.140 doesn't entitle citizen to a face-to-face confrontation and verbal exchange with elected officials);  
29 *Chevron USA v. CPSGMHB*, 156 Wn.2d 131 (2005)(GMA does not require individual notice to property  
30 owners); *Fuhriman v. City of Bothell*, Case No. 05-3-0025c, FDO at 13 (Aug 29, 2005)(Individual notice not  
31 required by GMA).

32 <sup>56</sup> See e.g. Exhibit 9 (May 2007 Notice of Public Hearing and Survey Launch, Project Poulsbo Website,  
Community Conversations); Exhibit 75 (Draft Comp Plan distribution mailing list); Exhibit 147 (July 2009  
publication of 2009 Draft Comprehensive Plan); Exhibit 218 (Sept 2009 Notice of City Council Public Hearing)

<sup>57</sup> See e.g. *Dyes Inlet v. Kitsap County*, Case No. 07-3-0021c, FDO (Aug. 20, 2007)(Not all notice methods  
listed in .035 required); *Abbey Road v. City of Bonney Lake*, Case No. 05-3-0048, FDO at 8-9 (May 15,  
2006)(.035 provides a non-exclusive list of methods for notice)

<sup>58</sup> Wold HOM Brief, at 8-9

<sup>59</sup> *Chevron v. CPSGMHB*, 156 Wn.2d 131 (2005); *Holbrook v Clark County*, 112 Wn. App. 354 (2003)

1 Within their discussion on public participation, Wold complains that the City of Poulsbo did  
2 not contact the US Navy (Naval Base Kitsap) regarding jurisdictional coordination.<sup>60</sup> The  
3 Board addressed this in its Order on Motions, finding that given the location of the naval  
4 base to the City, RCW 36.70A.530 did not require special notice for the US Navy.<sup>61</sup>  
5 Similarly, the GMA's public participation requirements do not establish such a duty. The  
6 Board notes that the Navy is one of the agencies participating in the inter-governmental  
7 Kitsap Regional Coordinating Council. The City of Poulsbo provided notice of its planning  
8 process to other jurisdictions, including the Navy, by sending notice to KRCC.<sup>62</sup>  
9

10  
11 Conclusion

12 One of the continuing complaints the Board sees are from citizens who become involved in  
13 an anticipated action taken by a City or County. They become involved because of genuine  
14 interest in the contemplated action and the public's potential interaction with the decision  
15 makers. Because of that genuine interest, they closely follow how the public is  
16 communicated with throughout the process. The current case is a prime example of that  
17 level of interest. The Petitioners are private citizens who have a deep and honest interest in  
18 the community.  
19

20  
21 When citizen suggestions are not followed to the extent the Petitioners feel they should be  
22 listened to, they began to face the reality that the Growth Management Act is not a citizen-  
23 decide process. The ultimate responsibility goes to the elected decision makers. In this  
24 case, the Poulsbo City Council makes the decision. Because the City Council has not  
25 incorporated all of the citizen requested modifications, does not mean that a flawed public  
26 participation plan took place. In this case there was a public participation opportunity,  
27 citizens took part in the process and the City Council made a decision.  
28  
29  
30  
31

32 <sup>60</sup> Wold HOM Brief at 7.

<sup>61</sup> May 11, 2010 Order on Motions at 13-14.

<sup>62</sup> HOM Transcript, at 49-50.

1 Therefore, the Board finds and concludes that Petitioners **failed to carry their burden of**  
2 **proof** in demonstrating Poulsbo's action in adopting Ordinance 2009-14 violated RCW  
3 36.70A.035, .130(2)(a), and .140 or failed to be guided by RCW 36.70A.020(11). Issues 1,  
4 2 and 3 are **dismissed**.

## 6 **B. ENVIRONMENT, CRITICAL AREAS, AND BEST AVAILABLE SCIENCE**

7 Petitioners alleged several violations based on GMA provisions related to the environment  
8 and critical areas. Petitioner sets forth argument individually for each of these issues and,  
9 therefore, the Board's response will be in a similar manner.  
10

- 11 • Flooding, Stormwater, and Water Resources

12 As set forth in the Board's Prehearing Order, Issue 5 provides:

13 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

14 ***Issue 5:** Violate RCW 36.70A.020(9), 36.70A.020(10), and 36.70A.070(1) by not*  
15 *reviewing flooding and stormwater run-off and through failure to protect ground*  
16 *water, aquifer recharge, water quality, and to provide corrective actions to mitigate*  
17 *or cleanse those discharges to the waters of Puget Sound? [Wold 1H and 7 (both*  
18 *in part)]*

### 19 Applicable Law

20 RCW 36.70A.020 sets forth the GMA's planning goals. These goals cited by Petitioners  
21 provide:  
22

23 RCW 36.70A.020(9) Open space and Recreation. Retain open space, enhance  
24 recreational opportunities, conserve fish and wildlife habitat, increase access to  
25 natural resource lands and water, and develop parks and recreation facilities.

26 RCW 36.70A.020(10) Environment. Protect the environment and enhance the  
27 state's high quality of life, including air and water quality, and the availability of  
28 water.

29 RCW 36.70A.070(1) contains the required features of a comprehensive plan Land Use  
30 element. In relevant part, this provision provides:  
31  
32

1 ... The land use element shall provide for the protection of the quality and  
2 quantity of groundwater used for public water supplies ... Where applicable, the  
3 land use element shall review drainage, flooding, and storm water run-off in the  
4 area and nearby jurisdictions and provide guidance for corrective actions to  
5 mitigate or cleanse those discharges that pollute waters of the state, including  
6 Puget Sound or waters entering Puget Sound.

7 Position of the Parties

8 Citing to this Board's 2007 holding in *Hensley III*,<sup>63</sup> Wold argues the Comprehensive Plan  
9 must be remanded because the Land Use Element does not specifically provide for the  
10 protection of groundwater nor does it contain a specific review of drainage, flooding, or  
11 stormwater runoff as required by RCW 36.70A.070(1).<sup>64</sup> Wold contends the Land Use  
12 Element is simply devoid of any of the required review nor does it give guidance for  
13 corrective actions to address discharges that pollute waters of the state.<sup>65</sup> Wold also asserts  
14 Goal 10 directs Poulsbo to protect the environment, including water. Wold notes there has  
15 been extensive stormwater damage within Johnson Creek due to development in the  
16 headwaters and incorrectly designed system, damage such as loss of salmon, scouring of  
17 the creek channel, and sediment loading in Liberty Bay.<sup>66</sup>

18  
19  
20 In response, the City of Poulsbo cites to goals and policies within its Comprehensive Plan  
21 which it contends protect groundwater quantity and quality, such as Goal LU-12 in the Land  
22 Use Chapter and Goal NE 3 in the Environment Chapter.<sup>67</sup> The City asserts the main  
23 purpose of policies such as LU 12.6, which provides for implementation of Low Impact  
24 Development (LID), is to reduce runoff and increase recharge while removing pollutants.<sup>68</sup>  
25  
26  
27  
28  
29

30 <sup>63</sup> *Hensley v. City of Woodinville*, Case No. 96-3-0031

31 <sup>64</sup> Wold HOM Brief at 12

32 <sup>65</sup> Wold HOM Brief at 12

<sup>66</sup> Wold HOM Brief at 13

<sup>67</sup> City Response Brief to Wold at 11-12

<sup>68</sup> City Response Brief to Wold at 11

1 As to Wold's claims that the City has failed to review drainage, flooding, and stormwater  
2 runoff, the City cites to Goals LU-11 and LU-12 and the related policies.<sup>69</sup> The City also  
3 notes its Comprehensive Stormwater Management Plan is part of the Comprehensive Plan  
4 and this contains a detailed analysis for all drainage basins within the City and the  
5 unincorporated UGA.<sup>70</sup> The City further states that some of these same policies serve to  
6 provide the corrective guidance required by RCW 36.70A.070(1) to cleanse or mitigate  
7 discharges.<sup>71</sup>  
8

9  
10 In reply, Wold contends the City's reliance on Goals LU-11 and LU-12, along with their  
11 associated policies, does not provide for the required protection of groundwater quality nor  
12 does its reliance on goals, policies, or phrases contained in the Natural Environment  
13 Chapter of its Plan as RCW 36.70A.070(1) require these to be a component of the Land  
14 Use Element.<sup>72</sup> Wold further asserts that although the Land Use Element may direct the  
15 City to implement regulations or programs to provide guidance for corrective actions, it does  
16 not provide any guidance as to what these actions could be.<sup>73</sup> Wold reiterates the  
17 stormwater damage occurring in Johnson Creek during the last few years and contends the  
18 changes approved by the City to its comprehensive plan will exacerbate the situation.<sup>74</sup>  
19

#### 20 Board Discussion and Analysis

21  
22 The Board reviewed the 2009 Comprehensive Plan and finds the Land Use Chapter fully  
23 meets the environmental requirements cited by Petitioners from RCW 36.70A.070(1). The  
24 Petitioners are understandably distressed at the flooding and stream damage in Johnson  
25 Creek, which they attribute to development at the headwaters. The Comprehensive Plan  
26 directly addresses these problems in Goal 11 and 12 and the related policies.<sup>75</sup>  
27

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28  
29 <sup>69</sup> City Response Brief to Wold at 12.

30 <sup>70</sup> City Response Brief to Wold at 12, citing Appendix B-3, 2008 Stormwater Plan.

31 <sup>71</sup> City Response Brief to Wold at 13.

32 <sup>72</sup> Wold Reply Brief at 10-11.

<sup>73</sup> Wold Reply Brief at 13.

<sup>74</sup> Wold Reply Brief at 13-14.

<sup>75</sup> Index 255, at 50-52.

1 Goal 11 calls for measures to manage storm water and reduce flooding and contamination.  
2 Policies LU-11.1 through LU-11.6 link to the Stormwater Management Plan, adopted by the  
3 City in 2008 and attached as Appendix B-3 to the Comprehensive Plan. The Stormwater  
4 Management Plan inventories the drainage basins, reviews flooding and storm run-off  
5 patterns, and sets out corrective actions.<sup>76</sup>

7  
8 Goal 12 calls for implementation of Low-Impact Development techniques. Again, the City's  
9 focus is on infiltrating storm water at construction sites to protect groundwater and prevent  
10 contamination of run-off to Puget Sound. The Board notes that the City has recently enacted  
11 a Low-Impact Development regulation.<sup>77</sup>

12  
13 The Board finds that these Goals, Policies, and regulatory actions are designed to "mitigate  
14 and cleanse those discharges that pollute ... waters entering Puget Sound," as required by  
15 RCW 36.70A.070(1).  
16

17 The Goals and Policies in the Natural Environment Chapter further address Petitioners'  
18 concerns.<sup>78</sup> Goal NE-3 contains the strategies to "protect groundwater quality from potential  
19 contaminant sources." Goal NE-4 calls for regulation to reduce risk of flooding.<sup>79</sup>  
20

21  
22 The Board finds that these provisions fully satisfy the requirements of RCW 36.70A.070(1)  
23 to protect water quality, review drainage, provide for corrective action, and mitigate or  
24 cleanse polluting discharges.  
25

26 Conclusion  
27  
28  
29  
30

31 <sup>76</sup> Index 255, at 51, LU-11.1, LU-11.5.

<sup>77</sup> Exhibit 1 to City Response Brief (Wold)

32 <sup>78</sup> Index 255, at 90-92.

<sup>79</sup> *Id.* at 90-92. The Board considers Petitioners' apparent insistence that all these provisions and the regulations themselves must be contained in the Land Use Chapter of the Plan elevates form over substance.

1 The Board concludes that Petitioners **failed to carry their burden of proof** in  
2 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 failed to be guided by  
3 RCW 36.70A.020(9), .020(10), and violated RCW 36.70A.070(1).  
4

5 • **Special Consideration to Anadromous Fisheries and Preserving Wildlife**

6 As set forth in the Board's Prehearing Order, Issue 7 provides:  
7

8 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

9 **Issue 7:** *Violate RCW 36.70A.020(9), 36.70A.020(10), and 36.70A.172(1) by not*  
10 *giving special consideration to conservation or protection measures necessary to*  
11 *preserve or enhance anadromous fisheries and preserve wildlife and by not*  
12 *considering best available science in this regard, as one example, in development*  
13 *regulation policy NE-6.9? [Wold Issues 1H (in part), 13 and 15(in part)]*

14 *Applicable Law*

15 The language of RCW 36.70A.020(9), Open Space and Recreation Goal, and RCW  
16 36.70A.020(10), Environment Goal are set forth *supra*.  
17

18 RCW 36.70A.172(1) requires that the Best Available Science (BAS) be used when  
19 designating and protecting critical areas. In relevant part, this provision provides:

20 In designating and protecting critical areas ... cities shall include the best  
21 available science in developing policies and development regulations to protect  
22 the functions and values of critical areas. In addition,... cities shall give special  
23 consideration to conservation or protection measures necessary to preserve or  
24 enhance anadromous fisheries.

25 *Positions of the Parties*

26 Wold argues that the policies presented in the City's Comprehensive Plan intended to  
27 protect critical areas must have been developed based upon BAS and must demonstrate  
28 special consideration to measures necessary to preserve or enhance anadromous  
29 fisheries.<sup>80</sup> Wold's argument focuses on Policy NE 6.9, which states:  
30  
31  
32

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<sup>80</sup> Wold HOM Brief at 18-19.  
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1 Recommendations from two stream corridor ecological analyses should be  
2 reviewed for an appropriate inclusion in the City's storm water management  
3 program: (listing two reports by Fishman and Associates).

4 Citing to Policy NE 6.9 and relying upon WAC 365-195-905's criteria for determining BAS,  
5 Wold contends the two reports referenced in Policy NE 6.9 do not meet the standard for  
6 BAS nor were they prepared by a fishery biologist.<sup>81</sup>  
7

8 In response the City of Poulsbo states the Natural Environment Chapter of its  
9 Comprehensive Plan is replete with narrative and policies aimed at providing special  
10 consideration for anadromous fisheries, such as Policy NE 6.1 (critical area buffers), Policy  
11 NE 6.2 (protection of habitat for listed/candidate endangered species), and Policy NE 6.3  
12 (acquisition of land to preserve habitat).<sup>82</sup> In regards to Policy NE 6.9, which Wold relies  
13 upon in their briefing, the City contends that all this policy seeks is for the two referenced  
14 reports to be "review[ed] for appropriate inclusion" in the City's stormwater program and  
15 stormwater development regulations and, therefore, the policy does not deal with critical  
16 areas.<sup>83</sup>  
17  
18

19 In reply, Wold asserts that the City's narrative cannot mitigate the salmon runs in Johnson  
20 Creek which are being "rapidly eliminated" based on environmental problems caused by the  
21 City's actions.<sup>84</sup> Wold contends that although Policy NE 6.1 requires buffers, the City has  
22 overlapped these buffers with both FWHCA and open space designations without  
23 supporting BAS.<sup>85</sup> As to Policy NE 6.9, Wold reiterates the two referenced reports are not  
24 BAS and, contrary to the City's assertion, states this policy clearly addresses critical areas,  
25 and thus, any stormwater regulations based on the two referenced reports would  
26 undoubtedly impact critical areas.  
27  
28

29  
30  
31 <sup>81</sup> Wold HOM Brief at 19

<sup>82</sup> City Response Brief to Wold at 17

<sup>83</sup> City Response Brief to Wold at 18

<sup>84</sup> Wold Reply Brief, at 22

<sup>85</sup> Wold Reply Brief, at 23

1 Board Discussion and Analysis

2 Wold's argument rests on the effect of Policy NE 6.9, contending the referenced reports are  
3 not based upon BAS and therefore violate the GMA's mandate that BAS be utilized.

4 Petitioner's concern appears to be two-fold: (1) the two referenced reports aren't BAS and  
5 because comprehensive plan policies must be based on BAS this violates the GMA and (2)  
6 the Comprehensive Plan lacks consideration of anadromous fisheries because these  
7 reports were not prepared by a fisheries biologist.  
8

9  
10 As this Board has stated numerous times, RCW 36.70A.172(1) requires BAS to be utilized  
11 in the development of comprehensive plan policies that are to designate and protect critical  
12 areas.<sup>86</sup> The GMA does not require BAS for any other type of comprehensive policy other  
13 than those related to critical areas.  
14

15 The City asserts Policy NE 6.9 is not a critical areas policy but rather a storm water policy  
16 and, therefore, BAS is not required. In addition, the City contends that all this policy does is  
17 speak to the consideration of the information contained within these reports for "potential  
18 inclusion" within the stormwater program/regulations; it does not mandate the inclusion of  
19 that information in either the stormwater program/regulation or the critical area regulations.  
20 The policy says the two referenced reports "should be reviewed" for "any appropriate  
21 inclusion" in the City's stormwater program and development regulations. Not only is this  
22 policy voiced in a permissive as opposed to mandatory manner but it makes no reference to  
23 the City's critical area policies or regulations. Although the Board is cognitive of the impact  
24 stormwater discharges can have on aquatic critical areas, the Board does not read Policy  
25 NE 6.9 as being a "critical area" policy for which the GMA mandates the inclusion of BAS.  
26 In addition, if the City were to include any of the recommendations set forth in these reports  
27  
28  
29  
30  
31  
32

---

<sup>86</sup> See e.g. *Tulalip Tribes v. City of Monroe*, Case No. 99-3-0013, FDO at 4 (Jan. 31, 2000); *Lewis v. City of Edgewood*, Case No. 01-3-0020, FDO at 14 (Feb. 7, 2002).

1 within their critical areas ordinance (CAO), this would require an amendment of the CAO  
2 which the petitioners would have the ability to challenge under this same proposition.<sup>87</sup>

3  
4 As to the consideration of anadromous fisheries, the Board recognizes that salmon are an  
5 important part of Washington's economy and culture. Through a variety of laws and  
6 government programs, including the Salmon Recovery Act, RCW 77.85, and the Governor's  
7 Salmon Recovery Program, public and private interests have been working together to  
8 restore salmon runs. And, as Wold notes, the GMA, through RCW 36.70A.172(1), speaks  
9 to the recovery effort as well.<sup>88</sup>

10  
11 However, the Supreme Court has concluded in *Swinomish Tribal Community v. WWGMHB*,  
12 that RCW 36.70A.172(1) does not require the adoption of particular protective measures,  
13 only their consideration.<sup>89</sup>

14  
15 RCW 36.70A.172(1) requires counties to "give special consideration to ...  
16 protection measures necessary to preserve or enhance anadromous fisheries  
17 ... the requirement is to give "special consideration to" such measures, not  
18 necessarily to adopt them.

19 Thus, although there is a concerted effort underway to restore anadromous fisheries, the  
20 Legislature has only required the special *consideration* of measures, not the mandatory  
21 adoption of certain measures. And, as noted *supra*, consideration is limited to those  
22 policies and regulations intended to protect critical areas and since the Board has  
23 concluded Policy NE 6.9 is not such a policy, .172(1)'s language is not applicable. Lastly,  
24 the Board also notes that although the GMA establishes a duty on the City of Poulsbo to  
25 protect critical areas, it does not establish a duty to enhance already degraded areas.<sup>90</sup>

26  
27  
28 Conclusion

29  
30 <sup>87</sup> The Board notes that petitioners challenge the reports based on the qualifications of the authors, and have  
31 not provided the Board with any examples of substantive scientific disputes or errors.

32 <sup>88</sup> WAC 365-195-900 through 365-195-925 provides criteria to assist cities and counties in this endeavor so as  
to ensure that conservation or protection measures are grounded in the best available science.

<sup>89</sup> *Swinomish Indian Tribal Community v. WWGMHB*, 161 Wn.2d 415, 429 (2007).

<sup>90</sup> *Swinomish*, 161 Wn.2d at 428-29 (Court holding 'protect' does not equate to 'enhance' under the GMA).

1 The Board concludes that Petitioners **failed to carry their burden of proof** in  
2 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 failed to be guided by  
3 RCW 36.70A.020(9), .020(10), and violated RCW 36.70A.172(1).  
4

5 • **Designating and Protecting Wildlife Habitat Conservation Areas**

6 As set forth in the Board's Prehearing Order, Issue 8 provides:  
7

8 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

9 **Issue 8:** *Violate RCW 36.70A.070, RCW 36.70A.172 and 36.70A.020(9) by failing*  
10 *to designate or protect Wildlife Habitat Conservation Areas (WHCA) and their*  
11 *connectivity and having inconsistent documents, given that the City's Critical*  
12 *Areas Ordinance (CAO) provides a mechanism to protect WHCA yet neither the*  
13 *CAO nor the Comprehensive Plan identify these areas within the City or the Urban*  
14 *Growth Area (UGA), leaving it to planners or developers to identify these areas*  
15 *without the benefit of best available science? [Wold Issue 15 (in part) and 1G (in*  
16 *part)]*

17 Issue 30 provides in relevant part:  
18

19 **Issue 30:** *Violate RCW 36.70A.172 and 36.70A.070 when, for example, its CAO is*  
20 *inconsistent with the Natural Environment element of the CP (Chapter 5)....*

21 **Applicable Law**

22 The language of RCW 36.70A.020(9), Open Space and Recreation Goal, and RCW  
23 36.70A.172, is set forth *supra*.

24 RCW 36.70A.070, in general, establishes the mandatory elements for a comprehensive  
25 plan and the necessary components of each element. Within their briefing, Petitioners cite  
26 to RCW 36.70A.070(5)(c)(iv) which provides:

27 (5) Rural Element ...  
28

29 (c) Measures governing rural development. The rural element shall include  
30 measures that apply to rural development and protect the rural character of the  
31 areas, as established by the county, by:

32 ...

(iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface and  
groundwater resources.

1 Positions of the Parties

2  
3 Wold contends RCW 36.70A.070(5)(c)(iv) requires comprehensive plans to protect critical  
4 areas, surface water, and groundwater resources and RCW 36.70A.170 requires the  
5 designation of critical areas, with Fish and Wildlife Habitat Critical Areas (FWHCAs)  
6 included in the GMA's definition for critical areas.<sup>91</sup> Wold asserts that by overlaying stream  
7 buffers with open space and wildlife corridors, the City has failed to provide connections  
8 between these open space areas and the corridors. According to Wold, the lack of  
9 connectivity will result in the creation of isolated subpopulations along each stream corridor  
10 and precipitate adverse human-wildlife interaction as wildlife attempts to move through  
11 developed areas. In doing this, Wold contends the City has circumvented BAS  
12 requirements, violated WHCA designation protocol stipulated in the City's CAO, and  
13 reduced anadromous fish protection.<sup>92</sup>  
14

15  
16 In response, the City of Poulsbo contends Wold has abandoned Goal 9.<sup>93</sup> The City states  
17 that it has complied with .170's requirements to designate critical areas, including FWHCA  
18 as demonstrated by Figure NE-5 of the Natural Environment Chapter which shows seven  
19 different FWHCAs.<sup>94</sup> The City argues that although Wold states it has failed to provide  
20 connections between designated FWHCA which could create isolated subpopulations, Wold  
21 fails to provide any evidence as to these connections or species.<sup>95</sup> According to the City,  
22 given the fact that most species of concern are water dependent, it is unlikely that providing  
23 upland connectivity between stream buffers would serve a purpose.<sup>96</sup> The City points to  
24 Figure PRO-1 and Policy PRO 7.4 which identify mapped FWHCAs linked to the City and/or  
25 County CAO which are based on BAS.<sup>97</sup>  
26  
27

28  
29  
30 <sup>91</sup> Wold HOM brief at 20-21 (citing to RCW 36.70A.030(5) and WAC 365-190-130(1)).

31 <sup>92</sup> Wold HOM Brief at 21-22 (citing to RCW 36.70A.172(1) and PMC 16.20.310(e)).

32 <sup>93</sup> City Response Brief to Wold at 18-19.

<sup>94</sup> City Response Brief to Wold at 19-20, see Index 255, at 106.

<sup>95</sup> City Response Brief to Wold 19.

<sup>96</sup> City Response Brief to Wold at 20-21.

<sup>97</sup> City Response Brief to Wold at 21.

1 In reply, Wold contends it did not abandon Goal 9 as it has set forth ample argument  
2 concerning the City's failure to retain open space and conserve fish and wildlife habitat.<sup>98</sup>  
3 Wold asserts that by not following the procedures provided in the City's CAO, the City's  
4 actions are not supported by BAS, thus demonstrating inconsistency between the  
5 Comprehensive Plan and the CAO. Wold argues that although some species are water-  
6 dependent, the lack of upland connectivity impacts upland wildlife, such as bear, coyote,  
7 and deer, in violation of RCW 36.70A.170(1).<sup>99</sup> As to the City's assertion that the Parks,  
8 Recreation, and Open Space Chapter of its Comprehensive Plan satisfies its duty, Wold  
9 states the purpose of the open space designation within that chapter allows for public use  
10 and not only subverts the CAO's authority but demonstrates inconsistency.<sup>100</sup> In addition,  
11 Wold contends the overlap of critical area buffers with open space, without analyzing the  
12 impacts of this overlap, also circumvents BAS, the PMC's protocol for designation, and has  
13 reduced anadromous protection.<sup>101</sup>  
14  
15  
16

17 Board Discussion and Analysis

18 The Board first notes Wold cites to RCW 36.70A.070(5) which sets forth the components of  
19 a Comprehensive Plan's Rural Element. The City of Poulsbo does not have a Rural  
20 Element because not only are all areas within its boundaries a UGA,<sup>102</sup> but all areas within a  
21 UGA are "urban" by its very meaning. Thus, this GMA provision is not applicable. As to the  
22 City's claim of abandonment in regards to RCW 36.70A.020(9), although Wold did not  
23 expressly cite this provision their argument is based solely on fish and wildlife habitat, which  
24 is one of the things Goal 9 seeks to conserve.  
25  
26

27 The Board understands Petitioners' concern to be that the City has designated FWHCAs  
28 exclusively along stream corridors and shorelines, without designating upland connections  
29  
30

31 <sup>98</sup> Wold Reply Brief, at 24

<sup>99</sup> Wold Reply Brief, at 25

<sup>100</sup> Wold Reply Brief at 25-26

<sup>101</sup> Wold Reply Brief, at 26

<sup>102</sup> RCW 36.70A.110(1) – all cities are UGAs

1 between stream corridors. Petitioners argue this lack of connectivity may impact upland  
2 species, such as bear and deer, and is inconsistent with the procedures in the CAO.  
3 However, Petitioners' opening briefs have not pointed the Board to any science in the City's  
4 record identifying upland species of concern or their cross-country travel corridors. The  
5 Petitioners have the burden of demonstrating that designation of stream corridors and  
6 shorelines as habitat areas without upland connections will create "isolated subpopulations."  
7 Their briefing here has given the Board nothing beyond bare assertions.  
8

9  
10 In Legal Issue 8, and also in Legal Issue 30, the Petitioners allege that the City's  
11 Comprehensive Plan WHCA designation (or failure to designate) is inconsistent with the  
12 mechanism adopted in the CAO to protect these areas. However, beyond the issue  
13 statements themselves and a conclusory sentence in the Wold Prehearing Brief,<sup>103</sup> the  
14 Petitioners have provided no facts, legal authorities, or arguments on this issue.  
15

### 16 Conclusion

17 The Board concludes that Petitioners **failed to carry their burden of proof** in  
18 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 failed to be guided by  
19 RCW 36.70A.020(9) and violated RCW 36.70A.070(5)(c)(iv), and .172. The Board further  
20 concludes that Petitioners have not demonstrated inconsistency between the CAO and the  
21 Wildlife Habitat Conservation Area provisions of the Comprehensive Plan. Legal Issue 8 and  
22 the relevant portion of legal issue 30 are dismissed.  
23

### 24 25 • **Open Space within Critical Area Buffers**

26 As set forth in the Board's Prehearing Order, Issue 9 provides:  
27

28 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

29 **Issue 9:** *Violate RCW 36.70A.060(6), RCW 36.70A.020(9) and .020(10) by*  
30 *designating open space within the critical area buffers and because the City is*  
31

32 <sup>103</sup> Wold HOM Brief, at 22. The Board granted the City's motion to strike new facts and argument introduced in the Wold Reply Brief concerning upland species and concerning CAO provisions allegedly creating inconsistencies. See Section V, A – Motions to Strike.

1            *amending its planning regulations to meet the needs of development adjacent to*  
2            *open spaces that now exist in place of critical area buffers? [Lee 4.30, 4.4 and*  
3            *4.23 (in part)]*

4            Applicable Law

5            Petitioners cite to RCW 36.70A.060(6). However, there is no such provision in the GMA.

7            The language of RCW 36.70A.020(9), Open Space and Recreation Goal, and RCW  
8            36.70A.020(10), Environment Goal, is set forth *supra*.

10           Position of the Parties

11           Wold contends RCW 36.70A.130 imposes a duty on the City to bring its entire  
12           comprehensive plan and development regulations into compliance with the GMA. Wold  
13           argues that by adopting Policy NE-6.9 the City has “reopened or amended the CAO” and  
14           the underlying BAS, replacing it with non-BAS reports. In addition, Wold asserts the  
15           overlaying of stream buffers with open space and wildlife corridors effectively results in an  
16           amendment to the CAO.<sup>104</sup>

19           Lee’s argument mirrors that of Wold.<sup>105</sup> But, Lee also contends the application of multiple  
20           layers within a stream buffer fails to analyze the cumulative effects of these designations on  
21           both the environment and existing regulations, such as the CAO and the Planned  
22           Residential Development Ordinance.<sup>106</sup>

24           The City of Poulsbo contends Petitioner’s argument that the CAO was reopened by Policy  
25           NE-6.9 was addressed, and denied, by the Board in its May 2010 Motion to Supplement.  
26           The City asserts Policy NE 6.9 does not incorporate new reports but merely contemplates

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32           <sup>104</sup> Wold HOM Brief, at 22-23.

<sup>105</sup> Lee HOM Brief, at 5-6.

<sup>106</sup> Lee HOM Brief, at 6.

1 the review and potential inclusion of recommendations in the context of an update to  
2 development regulations in which Petitioners will have every opportunity to participate.<sup>107</sup>

3  
4 In reply, Petitioner Wold states the use of overlapping critical area buffers and open space  
5 fails to protect anadromous fish and wildlife habitat conservation areas. Wold states this  
6 overlapping effectively opens the areas to public use before the impacts are properly  
7 analyzed, resulting in a direct violation of RCW 36.70A.130.<sup>108</sup> Petitioner Lee adds that the  
8 City's actions result in an "arbitrary appearance of 'Open Space'" for which no development  
9 standards or codes exist.<sup>109</sup>

10  
11 Board Discussion and Analysis

12 The issue statement asserts a violation of RCW 36.70A.060(6); but this provision does not  
13 exist within the GMA. In this case, the Petitioners were afforded opportunities to clarify and  
14 refine their issue statements prior to the issuance of the Board's Prehearing Order. It is not  
15 the Board's role to ensure a petitioner has provided correct citations to the GMA provisions  
16 they alleged have been violated; that role is for the petitioner.

17  
18  
19 Here, Petitioners base their argument largely on RCW 36.70A.130 and on the GMA  
20 principle that a comprehensive plan must be consistent internally and with the development  
21 regulations. Their issue statement also asserts violations of GMA Planning Goals 9 and 10,  
22 which the Board considers within the context of Legal Issues 7 and 8. The Board previously  
23 addressed the Petitioners' objection to Policy NE 6.9 and found no violation of the GMA.

24  
25 The Board understands the Petitioners' substantive concern here to be that the City's  
26 mapping overlays stream buffers with open space and wildlife corridors. Petitioner Cellucci  
27 explained at the Hearing on the Merits that the definition of open space suggests public  
28  
29  
30  
31

32 <sup>107</sup> City Response Brief, at 21-22

<sup>108</sup> Wold Reply Brief, at 26-27.

<sup>109</sup> Lee Reply Brief, at 5.

1 access.<sup>110</sup> However, she stated that the CAO defines “open space” as land used for outdoor  
2 recreation and the like, “*excluding* buffers as required by this chapter.” Cellucci criticizes the  
3 Comprehensive Plan as “opening the Critical Areas Ordinance buffers to public use.”<sup>111</sup>  
4 Petitioner Wold also argues that reserved open space under the Planned Residential  
5 Development regulation includes stream buffers; thus she fears that the buffers and critical  
6 areas themselves will not be adequately protected.<sup>112</sup>  
7

8 The Board is aware of the overlapping values of the designations for open space, habitat,  
9 and critical area buffers. For example, “open space corridors” can serve a variety of  
10 purposes such as “recreation, wildlife habitat, trails, and connection of critical areas.”<sup>113</sup>  
11 Buffers for wetlands provide habitat and open space; trails provide recreation and wildlife  
12 corridors, and the like. Further, a City’s mapped open space may include privately owned  
13 lands; for example, reserved open space in a Planned Residential Development. The  
14 Petitioners have not shown here that a Comprehensive Plan map which simply aggregates  
15 various kinds of open spaces, from parks to trails to protected habitat, somehow diminishes  
16 or merges the different regulatory or access regulations that may apply.  
17  
18

19 Additionally, there is no intrinsic flaw in allowing developers to count critical area buffers as  
20 part of their required open space dedication; the CAO still governs how such buffer areas  
21 must be protected. In sum, the Board is not persuaded that the “overlapping” feared by the  
22 Petitioners diminishes the protections or conflicts with the provisions of the CAO.  
23  
24

## 25 Conclusion

26 The Board concludes that Petitioners **failed to carry their burden of proof** in  
27 demonstrating Poulsbo’s action in adoption of Ordinance 2009-14 failed to be guided by  
28 RCW 36.70A.020(9) and RCW 36.70A.020(10).  
29  
30

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31 <sup>110</sup> HOM Transcript, at 24-25.

32 <sup>111</sup> *Id.* at 25.

<sup>112</sup> *Id.* at 23.

<sup>113</sup> RCW 36.70A.160.

1  
2 **C. NATURAL RESOURCES**

3 As set forth in the Board's Prehearing Order, Legal Issue 6 is as follows:

4 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

5 **Issue 6-** *Did the City fail to be guided by and comply with RCW 36.70A.020(8) when*  
6 *the CP encourages low-density housing and industrial and commercial sprawl that*  
7 *will harm natural resource industries, for example, fostering the continued decline of*  
8 *the Puget Sound fishing and shellfish harvest?*

9  
10 Wold asserts Issues 5, 6, And 7 should be considered together.<sup>114</sup> The Board will consider  
11 Issue 6 separately, as the Board reads Issue 6 as alleging a GMA violation based on  
12 impacts to the fishing and shellfish industry, a natural resource industry.

13  
14 Applicable Law

15 RCW 36.70A.020(8) is the GMA's goal related to natural resource industries and provides:

16 Natural resource industries. Maintain and enhance natural resource-based  
17 industries, including productive timber, agricultural, and fisheries industries.  
18 Encourage the conservation of productive forest lands and productive agricultural  
19 lands, and discourage incompatible uses.

20 Position of the Parties:<sup>115</sup>

21 Wold opens with a brief discussion on the declining West Coast salmon population and the  
22 Federal disaster relief distributed to fishermen and related businesses because of the early  
23 closure of the salmon season.<sup>116</sup> Wold points to the Suquamish Tribe's communications with  
24 the City during the Comp Plan process as evidence of the Tribe's concern over the  
25 reduction in the City's formula for building densities.<sup>117</sup>

26  
27  
28  
29  
30  
31 <sup>114</sup> Wold HOM Brief at 14

32 <sup>115</sup> Only Wold sets forth argument on this issue.

<sup>116</sup> Wold HOM Brief at 14

<sup>117</sup> Wold HOM Brief at 14, Citing Index 183 and 229 as indicating a change in density from 5 du/acre to 4 du/acre.

1 Wold devotes a majority of the discussion to development-related issues, including an  
2 assertion that the City and County have a long history of establishing excessively sized  
3 UGAs.<sup>118</sup> According to Wold, the actions of Kitsap County, by allowing low density urban  
4 areas are “destroying rural communities and natural treasures” and the City plays an  
5 important role as well because it is perpetuating this type of development by manipulating  
6 density figures.<sup>119</sup> Lastly, Wold asserts the City has no plan to meter development in urban  
7 areas with infrastructure, thus allowing development to occur in a disorderly fashion.<sup>120</sup>  
8

9  
10 The City of Poulsbo devotes a majority of its brief responding to the issues of sprawl,  
11 density, growth, and environmental impacts as presented by Wold.<sup>121</sup> The City asserts that  
12 Wold’s claim regarding low-density sprawl, including commercial and industrial sprawl, is  
13 without support in fact or law and cites several cases.<sup>122</sup> The City reiterates that the size and  
14 boundary of the Poulsbo UGA is not subject to challenge; that the metering of growth is  
15 irrelevant to the current issue; and that controls are in place to address environmental  
16 impacts related to fisheries.<sup>123</sup>  
17

18 In their Reply Brief, Wold reasserts the development-related issues which they charge are  
19 bringing about the decline of the Puget Sound fishery.<sup>124</sup>  
20

### 21 Board Discussion and Conclusion

22

23 Wold, while drafting this issue as a concern over the impact development will have on the  
24 fishing industry, uses the bulk of their argument to argue against the City’s minimum density  
25

---

26 <sup>118</sup> Wold HOM Brief at 14-15

27 <sup>119</sup> Wold HOM Brief at 15, Citing Index 255, 240, 16, and 17 to demonstrate not only the financial and  
28 infrastructures costs of low-density development, including dwelling units per acre, but also the  
29 environmental/health costs.

30 <sup>120</sup> Wold HOM Brief at 15

31 <sup>121</sup> City Response Brief, at 13-17

32 <sup>122</sup> City Response Brief, at 14, City to *Suquamish Tribe v. Kitsap County*, Case 07-3-0019c FDO at 13 (Aug 15,  
2007)(Four dwelling units or greater is not low density residential sprawl); *WHIP v. Covington*, Case 01-3-  
0026, FDO at 13 (July 31, 2006)(Intensification of land use for commercial/industrial purposes within a UGA is  
not sprawl).

<sup>123</sup> City Response Brief at 15-17.

<sup>124</sup> Wold Reply Brief at 20-22.

1 of 4 dwelling units per acre in the RL designation and how that will add to the problem of  
2 sprawl in the City. The Petitioners do not address commercial and industrial sprawl as their  
3 issue statement suggests, only low density housing. The Board will take up the sprawl and  
4 dwelling units per acre issues under the Urban Growth Areas and Population Section of the  
5 FDO.  
6

7 Petitioner provides little factual argument centering on Goal 8 of the GMA which deals with  
8 "Natural Resource Industries". While the Petitioners gave testimony and supplied  
9 information to the City regarding their concerns, they have not presented proof or cited to  
10 the GMA as to how adoption of the Poulsbo 2009 Comprehensive Plan contributes  
11 specifically to the decline of natural resource industries, let alone the fishing industry. The  
12 Board reads Wold's argument as being founded on the contention that the City's  
13 Comprehensive Plan encourages both low-density housing and industrial/commercial  
14 sprawl and, it is these actions that are "fostering a decline" in the Puget Sound fishing  
15 industry, a natural resource industry for which Goal 8 is to guide the City's decision-making  
16 so as to both maintain and enhance the industry. Since the Board concludes, in  
17 subsequent sections of this Order, that the City's land use policy choices do not encourage  
18 sprawl nor violate the GMA's provisions in regard to urban growth, absent something more,  
19 the Board cannot find the City's actions were not guided by Goal 8.  
20  
21  
22

23 Salmon recovery and the prosperity of the fishing industry are major public policy goals in  
24 Washington, and therefore the Board does not discount Wold's concerns. But, Wold simply  
25 failed to provide adequate argument that the City's planning decisions, which were within  
26 the realm of the GMA, failed to be guided by Goal 8.  
27

### 28 Conclusion

29 The Board concludes that Petitioners failed to carry their burden of proof in demonstrating  
30 that Poulsbo's adoption of Ordinance 2009-14 failed to be guided by RCW 36.70A.020(8) in  
31 not supporting the fisheries industry. Issue 6 is **dismissed**.  
32

1       • **Timber Industry**

2       As set forth in the Board's Prehearing Order, Legal Issues 10, 11, and 12 are as follows:

3               **Issue 10-** *Did the City fail to adopt regulation protecting natural resource lands as*  
4               *required by RCW 36.70A.020(8), 36.70A.040, and 36.70A.210?*

5  
6               **Issue 11-** *Did the City violate RCW 36.70A.020(6), 36.70A.040, 36.70A.050,*  
7               *36.70A.060, 36.70A.140(a)(b), 36.70A.165 and 36.70A.177 regarding designated*  
8               *forest lands (see CP Goal LU-13 and Policy LU-13.5) and, for example, there are*  
9               *existing lands within the City limits and UGA which the Department of Natural*  
10              *Resources has categorized as "Designated Forestry," which were not identified and*  
11              *mapped in the Comprehensive Plan?*

12              **Issue 12-** *Did the City violate RCW 36.70A.070(1) by not protecting areas for*  
13              *agricultural and timber production?*

14       Applicable Law

15       RCW 36.70A.020(6) is the GMA's property rights goal and states:

16              Property rights. Private property shall not be taken for public use without just  
17              compensation having been made. The property rights of landowners shall be  
18              protected from arbitrary and discriminatory actions.

19  
20       RCW 36.70A.020(8) is set forth *supra* under the discussion related to the fisheries industry  
21       in Legal Issue 6.

22  
23       RCW 36.70A.070(1) provides, in relevant part:

24              A land use element designating the proposed general distribution and general  
25              location and extent of the uses of land, where appropriate, for ... timber  
26              production...

27  
28       Positions of the Parties

29       Issues 10, 11, and 12 are argued by the Petitioners and the City as a group. The Board will  
30       also address the issues as a group.

31  
32       In regards to Issues 10, 11, and 12, Lee asserts the City has included lands that are  
identified by their respective property owners as forest, agricultural, or timber land within the

1 UGA.<sup>125</sup> According to Lee, the City simply denotes these properties based on “Current Use  
2 Classification” which fails to properly disclose the use to both the public and adjoining  
3 properties.<sup>126</sup> Lee points out that both the Department of Natural Resources (DNR) and  
4 Kitsap County have recognized the forest land aspect of their property which should entitle  
5 them to protected rights via notice to title.<sup>127</sup> In addition, Lee notes Kitsap County has  
6 enacted a TDR program which Poulsbo did not coordinate with nor did it coordinate with  
7 DNR as to forest land classification.<sup>128</sup> Lastly, Lee contends .070(1) requires the land use  
8 element to designate agricultural and timber production lands, which the City has not done  
9 and therefore it violates the GMA.<sup>129</sup>

11  
12 The City of Poulsbo contends that Wold have abandoned Issues 10 and 11, and City notes  
13 that the Board has dismissed Issue 12 as to agricultural lands .<sup>130</sup> The City asserts the  
14 only property Lee gives specific information for is outside the Poulsbo city limits and is  
15 located in the unincorporated portion of the western Poulsbo UGA.<sup>131</sup> The City cites  
16 *Agriculture for Tomorrow v. City of Arlington*<sup>132</sup>, which held that cities are not authorized to  
17 designate resource lands outside their municipal boundaries and therefore have no duty to  
18 do so.<sup>133</sup> The City further argues that even if it had authority over Lees’ property, the Lees  
19 have not offered proof that their land meets the requirements for designation which,  
20 pursuant to RCW 36.70A.170(1), requires the land to be “not already characterized by  
21 urban growth” and have “long-term significance for commercial production of timber.”<sup>134</sup>  
22 The City contends that by definition, lands within the UGA are already characterized by  
23  
24  
25  
26

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27 <sup>125</sup> Lee HOM Brief at 7

28 <sup>126</sup> Lee HOM Brief at 7.

29 <sup>127</sup> Lee HOM Brief at 8.

30 <sup>128</sup> Lee HOM Brief at 8.

31 <sup>129</sup> Lee HOM Brief at 8.

32 <sup>130</sup> City Response Brief to Wold at 22-23.

<sup>131</sup> City Response Brief to Lee at 3.

<sup>132</sup> CPSGMHB Case No. 95-3-0056, Final Decision and Order at 7 (Feb. 13, 1996).

<sup>133</sup> City Response Brief to Lee at 3.

<sup>134</sup> City Response Brief to Lee at 3.

1 urban growth and Lee has not offered proof that their land has long term commercial timber  
2 production potential.<sup>135</sup>

3  
4 The City states that the Board's Order on Supplementation was clear when it said, the Lees'  
5 current classification as forest property "is not the same as a GMA designation of natural  
6 resource lands of long term commercial significance." Because the Petitioners' land is not  
7 GMA-designated forest land, the City argues it has no obligation under RCW 36.70A.070(1)  
8 to show the property as such in the Comprehensive Plan.<sup>136</sup> The City of Poulsbo states  
9 neither Petitioners' have pointed to specific property within the Poulsbo City limits or the  
10 unincorporated UGA which qualifies as productive timber land and have not provided  
11 evidence that such land exists.<sup>137</sup>

12  
13  
14 Lee, in their Reply Brief, introduces new information not provided in the Prehearing Brief  
15 and the Motion to Strike that information from the record was granted *supra*.<sup>138</sup>

16  
17 Board Discussion and Analysis:

18 As to the City's claim of abandonment, the Board finds petitioners have set forth no  
19 argument in relationship to RCW 36.70A.040, .050, .140(a), .140(b), .165, 177, and/or .210  
20 as set forth in Legal Issues 10 and 11. Those aspects of these issues are therefore deemed  
21 abandoned. As for RCW 36.70A.020(6), the Board finds that although the Lees have  
22 demonstrated throughout their briefing concern over property rights, their argument is  
23 expressly limited to a failure to designate. As such, this aspect of Legal Issue 11 is deemed  
24 abandoned which results in this issue having been abandoned in its entirety.

25  
26  
27 In addition, the City asserts Wold has abandoned Issues 10 and 11 in their entirety.<sup>139</sup>  
28 However, Board finds that Wold has incorporated the Lee arguments on Issues 10 and 11  
29 by reference.<sup>140</sup> Those Issues are not **dismissed** for Wold.

30  
31  
32 <sup>135</sup> City Response Brief to Lee at 3

<sup>136</sup> City Response Brief to Lee at 3.

<sup>137</sup> City Response Brief to Wold at 23.

<sup>138</sup> Lee Reply Brief at 6.

1 An important distinction is raised in Issues 10 and 12 related to municipal city limits and the  
2 Urban Growth Area. While cities and counties work cooperatively together to establish a  
3 City's Urban Growth Area, that property outside the municipal city limits remains under the  
4 jurisdiction of the County.<sup>141</sup> In this instance Petitioner Lees' property lies outside the  
5 Poulsbo City Limits in the unincorporated portion of the Poulsbo UGA. The Board finds that  
6 Issue 10 and 11 are grounded in an allegation that the City had a duty to lands located  
7 outside of its municipal boundaries, lands for which the City has no authority. Issues 10 and  
8 11 are **dismissed**.

11 As to Issue 12, addressed by both Wold and Lee, the Board agrees with the City of  
12 Poulsbo. The Petitioners have identified no specific properties inside the City Limits of  
13 Poulsbo or in the unincorporated County UGA that meet the criteria for productive forest  
14 land and have not provided evidence in the record of same. The Board takes official notice  
15 that "current use" tax designations may be associated with farms, woodlots, open space or  
16 natural areas. The City's Land Use map appropriately identifies the properties with "current  
17 use" status but does not, and is not required to, indicate the particular use for each property.  
18 The Petitioners have failed to demonstrate that any of these properties are natural resource  
19 lands requiring GMA identification. Issue 12 is **dismissed**.

### 22 Conclusion

24 The Board concludes that Petitioners **failed to carry their burden of proof** in  
25 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 violated RCW  
26 36.70A.070(1) and failed to be guided by RCW 36.70A.020(8).

## 28 **D. URBAN GROWTH AREAS, POPULATION, AND BUILDABLE LANDS ANALYSIS**

### 29 **• Introduction**

31 <sup>139</sup> City Response Brief to Wold at 23.

32 <sup>140</sup> Wold HOM Brief at 23.

<sup>141</sup> See e.g., *MT Development v Renton*, 140 Wn.App. 422 (2007) (City's have no authority to regulate outside their municipal boundaries).

1 In Legal Issues 14-24 Petitioners address a major concern of their challenge to the Poulsbo  
2 2009 Comprehensive Plan: the concern that the land capacity analysis used by the City was  
3 flawed, due to incorrect population and density numbers, and that the flawed land capacity  
4 analysis leads to a Poulsbo UGA that is currently oversized and that will expand  
5 unnecessarily in the future.  
6

7 Because these issues are related, the Board first summarizes the core GMA provisions. The  
8 Board then addresses a recent appellate court decision that alters the legal landscape of  
9 this case. Then the Board turns to an analysis of the discrete legal issues, reordering them  
10 slightly, and wrapping up this section with the argument concerning the relevant GMA  
11 Planning Goals.  
12

#### 13 GMA Framework

14  
15 RCW 36.70A.110 requires that each county required to plan under the GMA must designate  
16 an urban growth area within which urban growth shall occur and outside of which urban  
17 growth is not allowed. Urban growth areas are to be sized based upon the 20-year  
18 population forecasts provided by the State Office of Financial Management (OFM). **Legal**  
19 **Issues 15, 16, 19 and 20** allege violations of the UGA provisions of RCW 36.70A.110.  
20

21 RCW 36.70A.115 provides that county and city plans, taken together, must provide  
22 sufficient developable land to accommodate the forecast population. This requirement is the  
23 basis for collaborative county-wide planning policies that establish a periodic land capacity  
24 analysis. **Legal Issue 19** alleges violation of RCW 36.70A.115.  
25

26  
27 RCW 36.70A.130(1) and (4) require a review of comprehensive plans and development  
28 regulations every 7 years, focusing on changed provisions of the statute. RCW  
29 36.70A.130(3) requires that UGA area size and boundaries are to be updated every ten  
30 years. A land capacity analysis must be prepared to determine how much population can be  
31 accommodated on the existing urban land as designated and zoned, before any expansion  
32 of the UGA is allowed. **Legal Issues 17 and 18** allege violations of RCW 36.70A.130.

1 RCW 36.70A.210 requires counties, with their cities, to develop and adopt county-wide  
2 planning policies. Countywide planning policies (CPPs) are required to address  
3 implementation of RCW 36.70A.110 for identifying UGAs.<sup>142</sup> **Legal Issue 21** asserts a  
4 violation of RCW 36.70A.210.  
5

6  
7 RCW 36.70A.215 requires counties, with their cities, to establish a program for a five-year  
8 review to determine whether urban densities are being achieved in urban growth areas. The  
9 review results in a Buildable Lands Report (BLR) which then guides a determination of  
10 whether reasonable measures can be taken to forestall expansion of the UGA. **Legal**  
11 **Issues 22, 23, and 24** assert violations of RCW 36.70A.215 and the Buildable Lands  
12 Review requirements.  
13

14 Thus there are three GMA plan-review cycles that must be distinguished:  
15

- 16 • RCW 36.70A.130(1) and (4) require a review of comprehensive plans and  
17 development regulations every seven years, focusing on compliance with changed  
18 provisions in the Statute.<sup>143</sup>
- 19 • RCW 36.70A.130(3) requires a review of designated UGAs and allowed densities at  
20 least every ten years, with a view to determining whether to revise the urban growth  
21 area to accommodate the forecasted growth for the next twenty-year period.  
22 Changes to the UGA must be based on a Land Capacity Analysis (LCA). County  
23 governments are primarily responsible for designating and sizing UGAs and for the  
24 ten-year update, in consultation with their cities.
- 25 • RCW 36.70A.215 requires a five-year analysis of on-the-ground development  
26 experience called a Buildable Lands Review (BLR). The BLR tells the county and its  
27 cities whether they are on track in channeling growth to urban areas and reducing  
28 sprawl. This is a collaborative county/city program. The Buildable Land Review looks  
29 *back*, and checks past experience; the Land Capacity Analysis and ten-year UGA  
30 update look *forward* to ensure forecast growth can be accommodated.  
31

32  

---

<sup>142</sup> RCW 36.70A.210(3)(a).

<sup>143</sup> RCW 36.70A.130(4); *Thurston County*, 164 Wn.2d at 345.

1 RCW 36.70A.020(1), (2), (3), and (4) set forth the GMA Planning Goals to promote compact  
2 urban growth, reduce sprawl, support multi-modal transportation, and ensure a range of  
3 housing options. **Legal Issue 14** alleges failure to be guided by these goals.

4  
5 • ***Suquamish Tribe v Central Puget Sound GMHB***<sup>144</sup>

6 In its 2009 Comprehensive Plan and throughout its briefing and argument in this case, the  
7 City of Poulsbo relied on *Suquamish II v Kitsap County*,<sup>145</sup> a 2007 ruling of this Board that  
8 has now been reversed by the Court of Appeals. The Court's decision was issued after the  
9 hearing on the merits in this proceeding. The Board has received post-hearing briefing from  
10 all the parties.

11  
12 *Suquamish II* was a challenge to Kitsap County's 10-year update of its comprehensive plan.  
13 The 2006 updated plan included the land capacity analysis that the County used to  
14 determine the size of its UGA. The land capacity analysis was based on population  
15 projections, the County's urban growth target, available land, a market factor, and the  
16 minimum density within each zoning area. In determining the minimum density in  
17 unincorporated UGAs, the County revised the zoning applicable to 90 percent of its urban  
18 areas, designating them at a minimum density of 4 dwelling units per acre whereas the  
19 1998 Comprehensive Plan had set a minimum density of 5 du/acre. Because this down-  
20 zoning reduced the number of housing units that could be produced on the land, the County  
21 then expanded its UGA by 12 square miles.

22  
23 The Suquamish Tribe and others challenged the County's plan before this Board, arguing  
24 that the County's land capacity analysis and its decision to reduce urban density and  
25 expand the UGA violated the GMA urban growth and anti-sprawl goals and the  
26 requirements for UGA designation. The Board ruled in favor of the County on this issue. The  
27 Board ruled that the County's use of the four units per acre in its revised zoning and its land  
28  
29  
30  
31

32 <sup>144</sup> Court of Appeals Div II, No 39017-5-II (July 7, 2008)

<sup>145</sup> *Suquamish Tribe, et al v Kitsap County (Suquamish II)*, CPSGMHB Case No. 07-3-0019c, Final Decision  
and Order (Aug 15, 2007).

1 capacity analysis “did not fall outside the GMA’s requirements.” The Board reasoned that its  
2 prior decisions in Kitsap County had established 4 du/acre as an appropriate urban  
3 density.<sup>146</sup> While the Board acknowledged the persuasive evidence presented by the  
4 petitioners in support of increased densities and more compact urban growth, the Board  
5 concluded that the County’s decision was within the range required for GMA compliance.  
6

7 The Court of Appeals reversed the Board on this issue. The Court held that the Board  
8 improperly relied on a bright-line rule, approving the County’s down-zoning on the basis of a  
9 *priori* assumptions without analysis of current local circumstances. The Court explained:<sup>147</sup>  
10

11 The GMA created a general “framework to guide local jurisdictions instead of  
12 ‘bright-line’ rules.” *Viking Props.*, 155 Wn.2d at 129. Thus a county must base its  
13 action on “local circumstances” and the board, in its review, must engage in a  
14 focused factual inquiry and make its decision “on the specific circumstances of  
each case.” *Thurston County*, 164 Wn.2d at 353, 358 n. 19.

15 The Court concluded:

16 [T]he board may not take a shortcut to approve or disapprove proposed urban or  
17 rural densities based on a bright line rule – it must evaluate local circumstances  
18 in each instance to account specifically for the inevitable changes occurring over  
19 time. ... [W]e remand for the board to consider the current, specific local  
20 circumstances before resolving the issue of appropriate densities to be used in  
the county’s revisions to its comprehensive plan.<sup>148</sup>  
21

22 The City of Poulsbo urges the Board to distinguish the *Suquamish Tribe* case, on various  
23 grounds, while the Petitioners urge that the City’s 4 du/acre zoning minimums be  
24 invalidated.  
25

26 The Board is mindful that the *Suquamish Tribe* case has not been remanded. It would be  
27 premature to speculate on the impact of the ruling on Kitsap County’s Comprehensive Plan,  
28 County-wide Planning Policies or Land Capacity Analysis methodology. The Board  
29

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30  
31 <sup>146</sup> *Bremerton v Kitsap County (Bremerton I)*, CPSGMHB Case No. 95-3-0039, Final Decision and Order (Oct.  
32 6, 1995).

<sup>147</sup> *Suquamish Tribe*, Slip Op, at 15-16.

<sup>148</sup> *Id.* at 23.

1 therefore will seek to apply the Appellate Court's decision and reasoning to the facts of the  
2 present case, with a view to ensuring that the City has flexibility to participate in Kitsap  
3 County's 2012 LCA and BLR, as that process is likely to be amended in accord with the  
4 *Suquamish Tribe* ruling.

5  
6 • **Accurate Population Allocation**

7 As set forth in the Board's Prehearing Order, Issues 17 and 18 provide:

8 **Issue 17:** *Violate RCW 36.70A.040 by reporting and implementing an inconsistent*  
9 *analysis of the population allocated to a city or county from the most recent 10-year*  
10 *population forecast by OFM in the Comprehensive Plan, SEIS, Buildable Lands*  
11 *Analysis, County and City Growth allocations, and Capital Facilities Plan? [Wold 5]*

12 **Issue 18:** *Violate RCW 36.70A.130(1)(a), .130(1)(c), .130(1)(d), .130(2)(a),*  
13 *.130(2)(b), .130(3)(a) and .130(3)(b) by not appropriately reviewing the population,*  
14 *housing densities, extent to which urban growth has located within the City, the*  
15 *unincorporated portion of the UGA and the County, when, for example, the*  
16 *population allocations in planning documents are inconsistent with the actual*  
17 *population growth and population allocations that the City and Kitsap County were*  
18 *supposed to update in 2009, but have not done so? [Wold 10]*

19 Applicable Law

20 RCW 36.70A.130(3) establishes the required ten-year review of UGAs:

21 (a) Each county that designates urban growth areas under RCW 36.70A.110 shall  
22 review, at least every ten years, its designated urban growth area or areas, and  
23 the densities permitted within both the incorporated and unincorporated portions  
24 of each urban growth area. In conjunction with this review by the county, each  
25 city located within an urban growth area shall review the densities permitted  
26 within its boundaries, and the extent to which the urban growth occurring within  
27 the county has located within each city and the unincorporated portions of the  
urban growth areas.

28 (b) The county comprehensive plan designating urban growth areas, and the  
29 densities permitted in the urban growth areas by the comprehensive plans of the  
30 county and each city located within the urban growth areas, shall be revised to  
31 accommodate the urban growth projected to occur in the county for the  
32 succeeding twenty-year period.

Positions of the Parties

1 Legal Issues 17 and 18 argue that the City has failed to conduct the review of population and  
2 housing densities required by RCW 36.70A.130. Further, the Petitioners contend that the  
3 City has used incorrect and inconsistent population numbers and housing densities.<sup>149</sup>  
4

5 The City asserts the Poulsbo 2009 Comprehensive Plan is not the 10-year UGA review and  
6 update required under RCW 36.70A.130(3).<sup>150</sup> Therefore, a Land Capacity Analysis (LCA)  
7 was not required: rather, the City states that it conducted a Land Capacity Analysis  
8 “voluntarily,” in order to model the effect of its local critical areas buffers.<sup>151</sup>  
9

10 Board Discussion and Analysis

11 The Board finds that Poulsbo’s 2009 Comprehensive Plan is *not* the 10-year UGA analysis  
12 and update required under GMA Section .130(3). The City’s “voluntary” 2009 LCA will not  
13 be determinative for the County’s UGA analysis, particularly in light of the *Suquamish II*  
14 ruling. Thus, there is no basis for the Board to find non-compliance with the requirements of  
15 RCW 36.70A.130(3).  
16

17  
18 The Petitioners contend that the City’s population numbers were inaccurate and  
19 inconsistent in various drafts and planning documents. Petitioners base their complaint on  
20 the underreporting of housing permits up until the end of 2008. Petitioners have  
21 demonstrated that the City was under-counting its development permits for a number of  
22 years prior to 2009, resulting in a reported 2008 population of 7,840, when the correct  
23 number should have been 8,855. It was the diligence of Petitioner Wold that brought to light  
24 the incorrect housing count. Her persistence finally persuaded the City to conduct a hand-  
25 count of all residential building permits and certificates of occupancy issued by the City  
26 since the year 2000.<sup>152</sup>  
27  
28  
29  
30

31 <sup>149</sup> Wold HOM Brief, at 26.

32 <sup>150</sup> City Response Brief, at 34.

<sup>151</sup> *Id.*; Index 255, at 252-254.

<sup>152</sup> Index 62, at 3.

1 The City acknowledges that it used under-stated numbers in the first draft of the  
2 Comprehensive Plan issued January 2009.<sup>153</sup> However, it included a note in the draft saying  
3 that OFM's population estimate would increase as a result of the hand count and that the  
4 City's LCA would be revised when the new OFM numbers became available.<sup>154</sup> The correct  
5 population – raised to 8,855 - was included in the July 2009 Comprehensive Plan draft and  
6 in all subsequent materials and related documents.  
7

8 Like the public participation violation noted under Legal Issue 1-3, the City here corrected its  
9 error and incorporated accurate population numbers into the Comprehensive Plan and the  
10 Land Capacity Analysis before adoption by the City Council. The Petitioners rightly argue  
11 that inaccurate population statistics can result in GMA violations. However, the Board does  
12 not judge non-compliance based on mistakes or resistance along the way, but on the actual  
13 Ordinance adopted by the City Council. In the present case, the City, at Petitioners' urging,  
14 corrected its errors before adopting its Plan. Petitioners have not met their burden of proving  
15 an error of population numbers in the enacted Plan.  
16  
17

18 Petitioner Wold asserts that 290 dwelling units in the Olhava Master Plan and units in the  
19 Poulsbo Place development have been omitted.<sup>155</sup> These properties are not RL designated.  
20 Olhava is designated RM – Residential Medium - and is accounted for under the RM  
21 category, and Poulsbo Place is "Redevelopment Master Plan Overlay." These  
22 developments are all accounted for in the LCA and in the City's 2009 Plan.<sup>156</sup>  
23  
24

### 25 Conclusion

26 The Board concludes that Petitioners have not carried their burden in demonstrating non-  
27 compliance with RCW 36.70A.130. Legal Issues 17 and 18 are **dismissed**.  
28  
29  
30

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31 <sup>153</sup> City Response Brief, at 29-30.

32 <sup>154</sup> Index 66, at 270.

<sup>155</sup> Wold HOM Brief at 29

<sup>156</sup> Comp Plan, Index 255, at 243, 254-54.

1       • **Calculating and Planning for Population Densities**

2 As set forth in the Board's Prehearing Order, Issue 19 provides:

3       ***Issue 19:*** *Violate RCW, 36.70A.020(1), 36.70A.110(2), and 36.70A.115 by*  
4       *manipulating its methodology for calculating projected densities and population*  
5       *allocations and by ignoring historical growth patterns that have exceeded projected*  
6       *population density goals across all housing densities? [Lee 4.28]*

7       *Applicable Law*

8       RCW 36.70A.110(2) requires, in relevant part:

9               Based upon the growth management population projection made for the county  
10              by the office of financial management, the county and each city within the county  
11              shall include areas and densities sufficient to permit the urban growth that is  
12              projected to occur in the county for the succeeding twenty-year period....

13       RCW 36.70A.115 provides:

14              Counties and cities that are required or choose to plan under RCW 36.70A.040  
15              shall ensure that, taken collectively, adoption of and amendments to their  
16              comprehensive plans and/or developments regulations provides sufficient  
17              capacity of land suitable for development within their jurisdictions to  
18              accommodate their allocated housing and employment growth, as adopted in the  
19              applicable countywide planning policies and consistent with the twenty-year  
20              population forecast from the office of financial management.

21       *Positions of the Parties*

22       The Petitioners assert:

23              If the City is permitted to use unrealistically low densities in its Comprehensive  
24              Plan, those densities will form the basis for UGA sizing by the County when it  
25              undertakes the next County Comp Plan update in 2012. Establishing appropriate  
26              densities at this stage of the planning process is crucial to correcting these errors,  
27              promoting compact growth and an appropriately-sized UGA in the future.<sup>157</sup>

28       The Petitioners argue that the City's "super low minimum and maximum densities in the  
29       City's largest zoning district" is an inefficient use of land that will create "unnecessary  
30  
31  
32

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<sup>157</sup> Wold HOM Brief, at 25.  
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1 pressure to expand the UGA” in the future.<sup>158</sup> The Petitioners “wish to have the twin  
2 mandates of the GMA embraced: (1) protecting natural resource lands, environmentally  
3 sensitive lands, and rural areas by (2) focusing more growth inside of urban areas.”<sup>159</sup> The  
4 Petitioners conclude “that the exceptionally low densities now adopted by the City for the  
5 bulk of its residential lands is at odds with what they have been achieving on the ground and  
6 fails to comply with the basic goals and requirements of the GMA.”<sup>160</sup>  
7

8 The City responds that its 2009 Comprehensive Plan does not change the existing zoning  
9 nor seek to expand the UGA. The City asserts there is no basis to require rezoning at higher  
10 densities to accommodate allocated growth.<sup>161</sup>  
11

12  
13 Board Discussion and Analysis

14 The Board notes that the Poulsbo Subarea Plan was adopted by Kitsap County in 2002.  
15 The Subarea Plan established the boundaries for the Poulsbo UGA and approved the RL  
16 zoning designations that would apply both within the city and in the unincorporated UGA.  
17 These UGA boundaries and zoning designations were not changed by the 2009 Plan.  
18 Unlike the flawed County plan that the *Suquamish Tribe* Court has now found non-  
19 compliant, the 2009 Poulsbo Comprehensive Plan has not down-zoned its zoning  
20 designations nor sought to expand its UGA boundaries. While the zoned minimum density  
21 in Poulsbo’s RL designation is 4 du/net acre, the City has adopted several “infill and  
22 development maximization measures.”<sup>162</sup> As a result, achieved densities of new  
23 development in every zone are higher than the minimums. These achieved densities are not  
24 “ignored” in the City’s Plan (as Legal Issue 19 contends), but rather are relied on in the  
25 narrative of the Plan to demonstrate the unlikelihood that UGA expansion will be needed.<sup>163</sup>  
26  
27  
28  
29

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30 <sup>158</sup> Wold Reply Brief, at 18-19.

31 <sup>159</sup> *Id.* at 20.

32 <sup>160</sup> *Id.* at 20.

<sup>161</sup> City Response Brief, at 27.

<sup>162</sup> Index 255, at 256-258.

<sup>163</sup> Index 255, at 243-244, 255-257.

1 The 2002 Subarea Plan adopted a density “target” of 5 du/net acre for the RL designation.  
2 The achieved densities in the RL district have averaged 6.1 du/net acre, thus more than  
3 meeting the 2002 target. Petitioners present no evidence that future developments are less  
4 likely to take advantage of the City’s maximization techniques. Rezoning at a higher  
5 ‘minimum’ is not necessary to accommodate the allocated growth.  
6

### 7 Conclusion

8 The Board concludes that Petitioners have **not carried their burden** of demonstrating that  
9 the City is required to re-zone at higher densities in order to comply with RCW  
10 36.70A.110(2) and .115. Legal Issue 19 is **dismissed**.  
11

### 12 • **Land Capacity Analysis and County-Wide Planning Policies**

13 As set forth in the Board’s Prehearing Order, Issue 21 provides:  
14

15 ***Issue 21:** Violate RCW 36.70A.210(1) by altering its land use powers based on*  
16 *direction from Kitsap County and county planning policies when, for example, the*  
17 *building densities used by the City were based on County direction rather than on*  
18 *City planning densities, documents and regulations and on-the-ground facts and*  
19 *actions? [Wold Issue 16]*

### 20 Applicable Law

21 RCW 36.70A.210(1), which requires the development of county-wide planning policies,  
22 states:  
23

24 Nothing in this section shall be construed to alter the land-use powers of cities.

### 25 Positions of the Parties

26 Petitioners argue that the City improperly ceded its land use powers to the County by basing  
27 the building densities in the City’s Land Capacity Analysis on a formula directed by County-  
28 wide Planning Policies, not by on-the-ground facts. Petitioners contend that this is a  
29 violation of RCW 36.70A.210(1).  
30

31 The City responds that it used minimum zoned densities, rather than achieved or “trend”  
32 densities, in its Land Capacity Analysis in accord with a city-county agreement for a

1 coordinated methodology. The City argues that County-wide Planning Policies are intended  
2 to give substantive direction to city comprehensive planning, because they are designed to  
3 provide a framework for consistency among plans in a county. The City points to a pair of  
4 decisions in which the Board held that the reserved “land-use powers” in the statute “refers  
5 to development regulations and other controls such as right-of way or street vacations,  
6 annexation, and environmental procedures.”<sup>164</sup> No such regulatory controls were involved in  
7 the City’s use of the LCA methodology at issue here, the City states.  
8

9  
10 Board Discussion and Analysis

11 The GMA requires that County-wide Planning Policies be adopted to “establish a framework  
12 from which county and city comprehensive plans are developed and adopted pursuant to  
13 [the GMA].”<sup>165</sup> County-wide Planning Policies “at a minimum” must include policies to  
14 implement the designation of urban growth areas.<sup>166</sup>

15       Based upon the growth management population projection made for the county by  
16       the office of financial management, each county and each city within the county shall  
17       include areas and densities sufficient to permit the urban growth that is projected to  
18       occur in the county or city for the succeeding twenty-year period...<sup>167</sup>

19 City comprehensive plans must be consistent with the adopted CPPs. <sup>168</sup>  
20

21 County-wide Planning Policies must also be adopted to establish a five-year review and  
22 evaluation program – the Buildable Lands Review.<sup>169</sup> The BLR compares county and city  
23 growth assumptions and targets with actual growth and development trends to “determine  
24 whether there is sufficient suitable land to accommodate the county-wide population  
25  
26

27  
28 <sup>164</sup> *City of Snoqualmie v King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (Mar. 1,  
29 1993), at 12; *City of Edmonds v Snohomish County*, CPSGMHB Case No. 93-3-0005, Final Decision and  
30 Order (Oct. 4, 1993), at 21.

31 <sup>165</sup> RCW 36.70A.210(1).

32 <sup>166</sup> RCW 36.70A.210(3)(a).

<sup>167</sup> RCW 36.70A.110(2).

<sup>168</sup> *City of Tacoma v Pierce County*, CPSGMHB Case No. 99-3-0023c, Final Decision and Order, (June 26,  
2000); *City of Snoqualmie v King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order (Mar. 1,  
1993).

<sup>169</sup> RCW 36.70A.215(1).

1 projection ... and the subsequent population allocations within the county and between the  
2 county and its cities” in the UGAs and to “determine the amount of land needed ... for the  
3 remaining portion of the twenty-year planning period used in the most recently adopted  
4 comprehensive plan.”<sup>170</sup>

5  
6 The County-wide Planning Policies are to be developed and adopted in “a collaborative  
7 process” between the county and its cities.<sup>171</sup>

8  
9 Kitsap County CPPs contain policies concerning Land Capacity Analysis, Buildable Lands  
10 Review, and Urban Growth Areas. Policy UGA-1, Index 255, Appendix C-3 at 7, provides:

- 11     a. The County and the Cities shall maintain a Land Capacity Analysis Program using  
12         consistent, agreed-upon methodology to estimate the land supply available for future  
13         residential, commercial, and industrial growth.  
14     b. The County and the Cities shall participate in an agreed-upon Buildable Lands  
15         Analysis Program to monitor and evaluate the effectiveness of their respective  
16         comprehensive plans.  
17     c. The County and Cities shall establish procedures for resolving disputes in collection  
18         and analysis of Land Capacity data....

19 The record in this case indicates that Kitsap County and its cities worked to develop an  
20 agreed methodology for Land Capacity Analysis in order to give consistency to the BLR and  
21 UGA calculations throughout the County.<sup>172</sup> The agreed methodology begins with  
22 determining the gross supply of vacant and underutilized parcels by zone. Then deduct  
23 identified critical areas, future roads and rights-of-way, lands needed for public facilities  
24 such as schools and parks, and lands unavailable based on landowner intent. The result is  
25 the net buildable acres remaining in each applicable zone. Next the total housing capacity is  
26 calculated by multiplying the minimum housing unit density in each zone. Finally, that  
27  
28  
29  
30  
31

32 <sup>170</sup> RCW 36.70A.210(1)(a) and (b).

<sup>171</sup> RCW 36.70A.210(2).

<sup>172</sup> 2009 Comp Plan, Index 255, at 249-252.

1 number is multiplied by the average household size (persons per household) in order to  
2 arrive at the total population capacity.<sup>173</sup>

3  
4 In applying this agreed methodology, the City of Poulsbo, apparently with the agreement of  
5 the other cities and the County, used two additional variables based on local circumstances:  
6 a critical areas reduction factor based on its own adopted buffers, and a city-specific  
7 average household size.<sup>174</sup>

8  
9 Petitioners allege one central flaw in these land capacity calculations: the City's use of the  
10 minimum housing density in each zone, rather than the achieved densities on-the-ground  
11 over the last decade. The minimum density in Poulsbo's RL zone, which provides 62  
12 percent of Poulsbo's residential land, is 4 units per net acre.<sup>175</sup> The achieved densities are  
13 6.7 units per gross acre. The Petitioners argue persuasively that, if the City multiplied its  
14 buildable acres by the actual achieved densities, there is ample capacity in the City's UGA  
15 for the forecasted population growth. But by using the smaller number – minimum zoned  
16 density – as its multiplier, the City ends up with not quite enough land for its population  
17 allocation. Thus the Petitioners argue, the City's data manipulation artificially creates a need  
18 for more land and for expansion of the UGA.  
19  
20

21 The Board notes that the City's analysis uses an agreed methodology designed to ensure  
22 County-wide consistency in land capacity calculations. The methodology does not appear to  
23 be based on a "bright line" definition of urban or rural density. Rather, the methodology  
24 recognizes local zoning regulations, critical area buffers, household size, and other local  
25 variables. The City modified the County formula to account for its own buffers and  
26 household size. The City did not apply a generic "bright line" urban density but used its  
27 actual zoned minimum densities – 4 du/net acre in the RL zone, 5 du/net acre in the RM  
28 zone, and 10 du/net acre in the RH zone.  
29  
30

31  
32 <sup>173</sup> Index 277, at 17-19 and Appendix A.

<sup>174</sup> Index 255, at 252.

<sup>175</sup> Index 255, App. A at 15.

1 Additionally, the City's Comprehensive Plan provides data concerning the achieved  
2 densities in residential projects approved from 2002 through 2008.<sup>176</sup> These statistics  
3 indicate an average net density of 7 units per acre. Should Kitsap County, on remand of the  
4 *Suquamish Tribe* case, choose or be required to use achieved densities in its land capacity  
5 methodology, the City's Comprehensive Plan provides the necessary data.  
6

7  
8 Petitioners point to language in the GMA section on County-wide Planning Policies stating:  
9 "Nothing in this section alters the land-use powers of cities..."<sup>177</sup> They argue that the City  
10 has wrongfully ceded its land use powers to the County in agreeing to use the County's LCA  
11 methodology.  
12

13 The Board does not concur. The GMA promotes coordinated planning among cities and  
14 counties.<sup>178</sup> For a county and its cities to develop an interjurisdictional agreement  
15 concerning a land capacity methodology is consistent with the coordination contemplated by  
16 RCW 36.70A.210.<sup>179</sup> On the present facts, the City of Poulsbo joined in a negotiated  
17 agreement with other cities and Kitsap County to develop a uniform methodology for land  
18 capacity analysis. The City retained its "land-use powers," as it in fact negotiated several  
19 individualized refinements to the agreed formula. The Board concludes the City's use of  
20 zoned densities rather than achieved densities for its LCA does not cede its land-use  
21 powers to the County.  
22  
23

## 24 Conclusion

25 The Board concludes that Petitioners failed to meet their burden of proving any violation of  
26 the "land-use powers" language of RCW 36.70A.210(1). Legal Issue 21 is **dismissed**.  
27

## 28

### 29 • Buildable Lands Review

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30 <sup>176</sup> Index 255, at 243, Table 13.2.

31 <sup>177</sup> RCW 36.70A.210(1)

32 <sup>178</sup> RCW 36.70A.020(11), .110(2); .210(2).

<sup>179</sup> Whether the methodology chosen is the best way to comply with the GMA is a separate question which the County will need to revisit when the *Suquamish Tribe* case is remanded.

1 As set forth in the Board's Prehearing Order, Issues 22, 23, and 24 are:

2 **Issue 22:** *Violate RCW 36.70A.215(3)(b) and 36.70A.215(3)(c) by not reviewing*  
3 *housing needs and density ranges to determine the amount of land needed for the*  
4 *remaining 20-year planning period when both the Comprehensive Plan and SEIS are*  
5 *based on a hypothetical housing density with no correlation to each other, to on-the-*  
6 *ground facts, accurate records, and realistic projections of planning and development*  
*within the City for the past decade? [Wold Issue 20]*

7 **Issue 23:** *Violate RCW 36.70A.215(1)(a) and RCW 36.70A.215(2)(a) by failing to*  
8 *collect data on urban and rural land uses, development, critical areas, and capital*  
9 *facilities necessary to determine quantity and type of land suitable for development*  
10 *and failing to determine the urban densities achieved within the UGA by comparing*  
11 *actual growth and development that has occurred with growth and development*  
12 *assumptions, targets, and objectives in the CWPP's (adopted in 1992 and revised in*  
13 *August 2001, December 2003, November 2004 and November 2008) and the City's*  
*Comprehensive Plan, such as in LU-2.1 and the SEIS? [Wold Issues 17 and 18]*

14 **Issue 24:** *Violate RCW 36.70A.215 by enforcing only minimum densities and not*  
15 *planning for and mandating maximum densities as in LU-2.1, LU-9.3 and the SEIS*  
16 *and violate RCW 36.70A.215(2)(d) and 36.70A.215(4) when, for example, the City*  
17 *determined that there were inconsistencies regarding housing densities and*  
18 *population numbers, but still took action that exacerbated the inconsistencies rather*  
19 *than reduced them? [Lee 4.26 and Wold Issue 19]*

20 Applicable Law

21 RCW 36.70A.215 establishes a Buildable Lands review and evaluation program. Each  
22 county, in consultation with its cities, must adopt County-wide Planning Policies setting up a  
23 five-year review cycle to monitor urban development - the Buildable Lands Review.<sup>180</sup> The  
24 BLR compares county/city growth assumptions and targets with actual growth and  
25 development trends.<sup>181</sup> This GMA provision provides, in relevant part:

26 (3) At a minimum, the evaluation component of the [BLR] shall:

27 (a) Determine whether there is sufficient suitable land to accommodate the  
28 county-wide population projection established for the county pursuant to  
29 RCW 43.62.035 and the subsequent population allocations within the  
30  
31  
32

---

<sup>180</sup> RCW 36.70A.215(1).

<sup>181</sup> RCW 36.70A.210(1)(a) and (b).

1 county and between the county and its cities and the requirements of RCW  
2 36.70A.110;

3 (b) Determine the actual density of housing that has been constructed and the  
4 actual amount of land developed for commercial and industrial uses within  
5 the urban growth area since the adoption of a comprehensive plan under  
6 this chapter or since the last periodic [BLR]; and

7 (c) Based on the actual density of development as determined under (b) of  
8 this subsection, review commercial, industrial, and housing needs by type  
9 and density to determine the amount of land needed ... for the remaining  
10 portion of the twenty-year planning period used in the most recently  
11 adopted comprehensive plan.

12 Where cities and counties find inconsistencies between their targets for urban growth and  
13 what is happening on the ground, they are required to adopt "reasonable measures, other  
14 than adjusting urban growth areas, that will be taken to comply with the requirements of [the  
15 GMA]."<sup>182</sup>

16  
17  
18 Positions of the Parties

19 Petitioners assert that the City has violated RCW 36.70A.215 by not complying with the  
20 requirements of the Buildable Lands review and evaluation program.

21  
22 The City asserts that the Land Capacity Analysis contained in its 2009 Comprehensive Plan  
23 is not the required BLR, although it "voluntarily" contains much of what the BLR requires.  
24 The City asserts that its Plan in fact demonstrates that it can accommodate the projected  
25 growth without expanding the UGA.<sup>183</sup>

26  
27 Board Discussion and Analysis

28 The Board's analysis begins with the statutory process. First, the Buildable Lands review  
29 and evaluation process is set out in the statute as an analytic program on a five-year cycle,  
30 to be developed through county/city collaboration. A City's Comprehensive Plan update may  
31

32  

---

<sup>182</sup> RCW 36.70A.215(1)(b).

<sup>183</sup> City Brief, at 27.

1 incorporate data from the latest BLR but is not a BLR and thus is not measured directly  
2 against the language of Section .215. Kitsap County produced its most recent Buildable  
3 Lands Report in 2007. The next update to the BLR is scheduled for 2012. In short, the City  
4 of Poulsbo's Comprehensive Plan is not a BLR and does not violate RCW 36.70A.215.  
5

6 Second, the Poulsbo 2009 Comprehensive Plan demonstrates that the City is more than  
7 meeting its density targets for development in the urban area. In evaluating approved  
8 residential projects since 2002, the Comprehensive Plan states:<sup>184</sup>  
9

10 **The City's growth strategies have worked.** The land use designation density  
11 ranges, minimum density requirements and incentives for clustering and infill  
12 have worked for the City to obtain an average net density of 7 units per net  
13 acre...

14 **The City is meeting its density target identified in the Poulsbo Subarea Plan**  
15 **for the RL designation/zoning district.** The Poulsbo Subarea Plan identified a  
16 5 du/net acre density target for the RL district (after consideration of critical areas  
17 and other reduction factors.) The evaluation of all residential projects concludes  
18 that an average density of 6.1 du/net acre was achieved in the RL district.

19 The City and the Petitioners acknowledge that if future development continues at these  
20 densities, there will be no need to expand the UGA.<sup>185</sup>  
21

22 Third, the Comprehensive Plan demonstrates that, although there is a slight shortfall in  
23 residential land capacity by 2025 if development only proceeds at zoned minimum densities  
24 (a shortfall of 76 to 205 dwelling units), the City has a menu of density maximization  
25 measures to increase urban infill.<sup>186</sup> These "reasonable measures other than adjusting  
26 urban growth areas" are an additional prevention against sprawl.<sup>187</sup>  
27  
28  
29  
30

31 <sup>184</sup> Index 255, at 243-244 (emphasis in original).  
32 <sup>185</sup> City Brief at 27, Lee Response, at 11.

<sup>186</sup> Index 255, at 256-258.

<sup>187</sup> RCW 36.70A.215(1)(b).

1 Thus, because the 2009 Comprehensive Plan is not the BLR, the City was not required to  
2 meet the specifications of RCW 36.70A.215. Nevertheless, the analysis in the Plan indicates  
3 the City is on track to meet and exceed its density targets.

4  
5 Conclusion

6 The Board concludes that Petitioners failed to meet their burden of demonstrating that the  
7 2009 Comprehensive Plan, as adopted by Ordinance 2009-14, violates RCW 36.70A.215.  
8 Legal Issues 22, 23, and 24 are **dismissed**.

9  
10 • **Annexation and Sequential Growth**

11 As set forth in the Board's Prehearing Order, and as modified by its May 11 Order on  
12 Motions, Issues 15 and 20 provide:

13  
14 **Issue 15:**<sup>188</sup> *Violate RCW 36.70A.110(3) by:*

15  
16 *(b) Failing to be guided by RCW 36.70A.110(3) through omission of a sequential*  
17 *order or following a sequential order for staging growth in implementing the goals*  
18 *and policies of the following chapters of its Comprehensive Plan: Land Use, Natural*  
19 *Environment, Capital Facilities, Housing, Economic Development, Utilities, and*  
20 *Transportation? [Lee Issue 4.25]*

21  
22 **Issue 20:** *Violate RCW 36.70A.110(3) and 36.70A.070(3)(e) by annexing and*  
23 *converting undeveloped lands with little or no infrastructure ahead of prepared,*  
24 *impermeable, infrastructure-rich lands and violate RCW 36.70A.070(3), RCW*  
25 *36.70.020 (1,2,6,8,9,12) because the City is not financially prepared to provide*  
26 *services for an excessive population growth allocation, excessive growth or oversized*  
27 *UGA's? [Lee 4.20 and 4.21]*

28  
29 Applicable Law

30 RCW 36.70A.110(3) states:

31 Urban growth should be located first in areas already characterized by urban  
32 growth that have adequate existing public facility and service capacities to serve  
such development, second in areas already characterized by urban growth that  
will be served adequately by a combination of both existing public facilities and  
services and any additional needed public facilities and services that are

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<sup>188</sup> Subpart (a) of Issue 15 was dismissed with the Board's May 11 Order on Motions.

provided by either public or private sources, and third in the remaining portions of the urban growth areas.

RCW 36.70A.020(12) provides:

Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use.

RCW 36.70A.070(3) provides that the capital facilities element of a comprehensive plan must contain:

(e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

#### Positions of the Parties

Petitioners contend that the City has failed to sequence growth as required by RCW 36.70A.110(3). They state there is no information in the Comprehensive Plan of how the City will stage growth to optimize infrastructure investments. Instead, Petitioners assert, the City has annexed land in response to developer proposals, approving 15 annexations between October 2003 and August 2007, "with no regard for its location or the planning of infrastructure."<sup>189</sup> Wold asserts: "Instead of completing urban development on the numerous vacant or underutilized lands already within the city limits, the City has continued to annex more land. By annexing land beyond existing vacant land, the City is encouraging "leapfrog" sprawl...."<sup>190</sup>

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<sup>189</sup> Wold HOM Brief, at 31.

<sup>190</sup> Wold Reply, at 30.

1 The City responds that the sequential staging of urban growth is not mandatory. The City  
2 points to Board decisions construing the statute's use of the word "should" rather than a  
3 mandatory "shall."<sup>191</sup>  
4

5 Board Discussion and Analysis

6 The statutory provision for growth phasing in RCW 36.70A.110(3) is advisory, but not  
7 meaningless. The option of locational phasing meshes with the requirement for  
8 infrastructure concurrency in RCW 36.70A.020(12) and .070(3)(e).  
9

10 The Board explained the GMA growth phasing options in *MBA/Camwest III v City of*  
11 *Sammamish*:<sup>192</sup>  
12

13 The GMA anticipates development phasing that is linked to the availability of  
14 public infrastructure. That linkage may be spatial, with development allowed first  
15 in the locations already served by public services and then following the  
16 extension of those services, [RCW 36.70A.110(3)], or the linkage may be  
17 temporal, with development times to match an infrastructure investment plan  
18 [RCW 36.70A.070(c) (transportation) and RCW 36.70A.020(12) (concurrency)].  
19 The phasing provisions of the GMA allow a local jurisdiction to "manage" and  
20 guide growth both locationally and temporally. However, such phasing is  
21 inextricably linked to the availability and adequacy of the necessary infrastructure  
22 to support that growth....

23 The GMA allows for restrictions on urban growth tied to the location of adequate  
24 infrastructure, and recognizes that developers may be called on to build  
25 infrastructure if they wish to develop beyond the location of existing and planned  
26 public/private improvements. RCW 36.70A.110(3).  
27

28 Applying these principles in a challenge to an expansion of the Kingston UGA in 2005, the  
29 Board found the expansion invalid because, although a developer was prepared to extend a  
30  
31

32 <sup>191</sup> See, e.g., *Citizens for Responsible Growth v. Snohomish County*, CPSGMHB Case No. 03-3-0013, Final  
Decision and Order (Dec. 8, 2003) at 8.

<sup>192</sup> CPSGMHB Case No. 05-3-0045, Final Decision and Order (Feb. 21, 2006) at 15.

1 sewer trunk line to the proposed expansion area, Kitsap County had failed to provide sewer  
2 infrastructure for 40% of the population of the un-expanded UGA.<sup>193</sup>

3  
4 In the present case, the City has undertaken a significant initiative for redevelopment in the  
5 heart of the City – Poulsbo Place Redevelopment – and has adopted or is planning other  
6 measures for first-tier infill.<sup>194</sup> For development farther out in the annexed areas, while the  
7 City's plan relies largely on private developers for sewer system extensions, there are plans  
8 for service to all portions of the City. RCW 36.70A.110(3) expressly contemplates public  
9 infrastructure in the second-tier areas may be provided "by either public or private sources."  
10 As set forth under Legal Issues 29 and 34 below, the City of Poulsbo has competent plans  
11 to provide urban infrastructure throughout the annexed areas in the 20-year planning  
12 horizon. In short, staged growth as advocated by Petitioners may well be a more prudent  
13 strategy, but it is not a GMA requirement, so long as infrastructure concurrency is achieved.  
14  
15

### 16 Conclusion

17 The Board concludes that Petitioners failed to meet their burden of proving non-compliance  
18 with RCW 36.70A.110(3) or RCW 36.70A.070(3)(e). Legal Issues 15b and 20 are  
19 **dismissed.**  
20

#### 21 • **Greenbelts and Open Space**

22  
23 As set forth in the Board's Prehearing Order, Issue 16 provides:

24 ***Issue 16:*** *Violate RCW 36.070A.020(9), RCW 36.70A.110(2) and RCW 36.70A.160*  
25 *and WAC 365-195-335 by not including greenbelts or open space corridors within*  
26 *and between the UGA's that are connected, including wildlife habitat and travel*  
27 *corridors, and violate RCW 36.70A.070(1) by not protecting areas for recreation and*  
28 *open space corridors? [Wold Issues 1G, 2C, 7 (in part) and 12; Lee Issue 4.3]*

### 29 Applicable Law

30 RCW 36.70A.160 requires:  
31

32 <sup>193</sup> *KCRP VI v Kitsap County*, CPSGMHB Case No. 06-3-0007, Order Finding Partial Compliance (Mar. 16, 2007), at 11.

<sup>194</sup> Index 255, at 243-44, 260.

1 Each [city] shall identify open space corridors within and between urban growth  
2 areas. They shall include lands useful for recreation, wildlife habitat, trails and  
3 connection of critical areas as defined in RCW 36.70A.030.

4 RCW 36.70A.110(2) requires, in relevant part:

5 Each urban growth area shall permit urban densities and shall include greenbelt and  
6 open space areas.

7  
8 Positions of Parties

9 Petitioners raise four arguments:

- 10
- 11 • The City failed to identify open space corridors as required by RCW 36.70A.160
  - 12 • The City failed to protect the open spaces designated under this section
  - 13 • The City failed to map open spaces in the Land Use Element of its plan as required  
14 by RCW 36.70A.070(1)
  - 15 • The City failed to identify greenbelts and open space in the UGA adjoining the City as  
16 required by RCW 36.70A.110(2)

17 The City contends Wold has abandoned claims related to WAC 365-195-335.<sup>195</sup> As to the  
18 merits, the City responds that open space is identified, as required by the statute, on the  
19 map labeled Figure PRO-1 titled "Citywide Park, Trail and Open Space Map."<sup>196</sup> The legend  
20 on the map indicates that it was prepared in compliance with RCW 36.70A.160 and includes  
21 public parks, public and privately-owned open space, designated Fish and Wildlife Habitat  
22 Conservation Areas, existing and planned public trails, and connections of critical areas into  
23 the Poulsbo UGA and unincorporated Kitsap County.<sup>197</sup>

24  
25 Board Discussion and Analysis

26  
27  
28  
29  
30 <sup>195</sup> City Response to Wold at 32. The Board notes Wold submits no argument in relationship to WAC 365-195-  
31 335. However, given that compliance with these procedural guidelines is not mandatory, the Board sees no  
32 need to officially find the provision was abandoned. See *North Clover Creek, et al v. Pierce County*, Case No.  
10-3-0003c, FDO at 10 (Aug. 2, 2010).

<sup>196</sup> Index 255, at 142.

<sup>197</sup> *Id.*

1 The Board finds that the City identified open space corridors on its map Figure PRO-1.<sup>198</sup> As  
2 the Board has often had cause to note, while RCW 36.70A.160 requires that open space  
3 corridors be *identified*, it does not require that they be *acquired* or *protected*.<sup>199</sup>  
4

5 Open space must also be identified in the UGA.<sup>200</sup> The Board finds that the City's plan  
6 additionally maps private open space and open space along stream buffers in the UGA.<sup>201</sup>  
7 While the Board has held that the primary responsibility for UGA open-space planning lies  
8 with the County,<sup>202</sup> the City's plan here in fact included the UGA open-space areas.  
9

10 Lest the Board's analysis appear excessively legalistic, the Board takes note of the real-life  
11 experience of these Petitioners and many others in the community. They have witnessed  
12 over the last decade as wild or rural countryside is turned into subdivisions and shopping  
13 malls, while stream banks erode and wash out salmon redds, woods and meadows are  
14 paved over, and wildlife disappears. The Board, however, is limited to enforcing the  
15 requirements of the GMA, and RCW 36.70A.160 does not require protection or acquisition  
16 of open space corridors, only their identification. The City's identified corridors along  
17 waterways meet that requirement.  
18  
19

## 20 Conclusion

21 The Board finds and concludes that Petitioners failed to meet their burden of proving non-  
22 compliance with RCW 36.70A.160 and the open-space provisions of RCW 36.70A.110(2).  
23 Legal Issue 16 is **dismissed**.  
24  
25  
26

---

27 <sup>198</sup> The Board considers Petitioners' apparent insistence that such a map must also be duplicated in the Land  
28 Use Chapter of the Plan elevates form over substance.

29 <sup>199</sup> *Aagaard v. City of Bothell*, CPSGMHB Case No. 08-3-0002, Final Decision and Order (Oct. 24, 2008), at  
30 20-21; *LMI/Chevron v. Town of Woodway*, CPSGMHB Case No. 98-03-0012, Final Decision and Order (Jan.  
31 8, 1999), at 54; *Agriculture for Tomorrow v. City of Arlington*, CPSGMHB Case No. 95-03-0056, Final Decision  
32 and Order (Feb 13, 1996), at 17.

<sup>200</sup> RCW 36.70A.110(2).

<sup>201</sup> Index 255, at 142, Figure PRO-1.

<sup>202</sup> *Agriculture for Tomorrow v City of Arlington*, CPSGMHB Case No. 95-3-0056, Final Decision and Order  
(Feb. 13, 1996), at 17.

1 • **Meeting the GMA Goals for Compact Urban Development and Avoiding Sprawl**

2 As set forth in the Board's Prehearing Order, Issue 14 provides:

3 ***Issue 14:** Fail to be guided by and comply with RCW 36.70A.020(1), .020(2),*  
4 *.020(3), and .020(4) when it adopted low and/or irregular housing densities and*  
5 *sprawl in the City, did not encourage efficient multimodal transportation systems,*  
6 *artificially inflated the need for UGA acreage in the City and County and encouraged*  
7 *urban growth and development in critical habitat, non-urbanized areas, and areas*  
8 *with inadequate public facilities? [Wold 1A, 1B, 1C and 1D]*

9 Applicable Law

10 RCW 36.70A.020 sets forth the guiding principles of comprehensive planning under the  
11 GMA. Four GMA Planning Goals are addressed here.

- 12
- 13 1. Urban growth. Encourage development in urban areas where adequate public  
14 facilities and services exist or can be provided in an efficient manner.
  - 15 2. Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into  
16 sprawling, low-density development.
  - 17 3. Transportation. Encourage efficient multimodal transportation systems that are based  
18 on regional priorities and coordinated with county and city comprehensive plans.
  - 19 4. Housing. Encourage the availability of affordable housing to all economic segments  
20 of the population of this state, promote a variety of residential densities and housing  
21 types, and encourage preservation of existing housing stock.

22 Positions of the Parties

23 Addressing Goal 1, Petitioners Wold and Cellucci argue that the UGA's are already  
24 oversized, and that because the City fails to provide phased and sequential growth,  
25 development cannot be served in an efficient manner.<sup>203</sup> In particular, Petitioners are  
26 concerned that the low densities used by the City as planning numbers will "prevent  
27 correction of the UGA sizing when Kitsap County reviews all of its UGAs in 2012."<sup>204</sup>  
28  
29  
30  
31  
32

---

<sup>203</sup> Wold HOM Brief, at 24.

<sup>204</sup> *Id.* at 25.

1 Addressing Goal 2, they contend that the low densities adopted in the City's Plan will create  
2 sprawl and lead to further expansion of the UGA.<sup>205</sup>

3  
4 Addressing Goal 3, Petitioners argue that the City's residential densities will not support  
5 multi-modal transportation systems.<sup>206</sup> Addressing Goal 4, Petitioners are concerned that  
6 the City's Plan encourages sub-divisions of expensive housing on undeveloped land,  
7 drawing development away from nearby Bremerton, where less expensive housing is  
8 available and infill is needed.<sup>207</sup>

9  
10 The City responds that 4 du/acre is an urban density and that infill within the incorporated  
11 city and within the UGA by definition is not sprawl.<sup>208</sup> Further, "the City is fully committed to  
12 reviewing the Poulsbo UGA through a joint process in 2012 aimed at 'determin[ing] what, if  
13 any adjustment, is necessary' to the size and boundaries of the UGA."<sup>209</sup>

14  
15  
16 Board Discussion and Analysis

17 In deciding Legal Issues 15-24 above, the Board reviewed the substantive requirements of  
18 the GMA that ensure compact urban growth and prevent sprawl – primarily RCW  
19 36.70A.110, 115, .130(3), .215, and applicable portions of .210. The Board concluded  
20 Petitioners have not met their burden of demonstrating that the Poulsbo Comprehensive  
21 Plan violates those provisions. Generally the Board will not find "non-compliance" with a  
22 GMA Planning Goal unless a GMA requirement has been violated. Nevertheless, the Board  
23 reviews Petitioners arguments here.

24  
25  
26 The first set of arguments is that the City is causing sprawl by adopting a plan that will  
27 hasten the enlargement of the UGA. The Board has previously ruled that the UGA size and  
28

29  
30  
31 <sup>205</sup> *Id.* at 24.

32 <sup>206</sup> *Id.* at 24.

<sup>207</sup> *Id.* at 27.

<sup>208</sup> City Response, at 30.

<sup>209</sup> *Id.* at 31, citing Comp Plan at 48

1 boundary was set by the County and cannot be challenged in this proceeding.<sup>210</sup>

2 Additionally, as stated in the Board's ruling on Legal Issues 15 and 20 above, phased  
3 growth is not mandatory if the City has competent plans to provide urban services  
4 throughout its incorporated area.

5  
6 The City's zoning in the RL zone, with a minimum of 4 du/net acres, nevertheless provides  
7 opportunities for additional infill. An email from City Planner Barry Berezowsky (much relied  
8 on by Petitioners) indicates that the City can accommodate an additional 1500 people in the  
9 current UGA, beyond the 14,808 OFM population forecast, if the City continues to infill at the  
10 current build-out rate of 6.1 du/acres, which it has been experiencing for the past 8 years.<sup>211</sup>

11 Thus, the evidence does not support the likelihood of UGA expansion, even with a new  
12 population allocation.

13  
14  
15 The Board's discussion of the Court of Appeals ruling in *Suquamish Tribe* acknowledges  
16 that, when the decision is remanded, Kitsap County will need to review and perhaps revise  
17 its Land Capacity Analysis methodology. Should the methodology be revised, Poulsbo has  
18 a wealth of data to update its LCA. Thanks to Ms. Wold's persistence, Poulsbo now has  
19 good records of its current population and of trend residential densities. As indicated, the  
20 City can readily absorb an additional 1500 people without UGA expansion through  
21 reasonable measures continuing the trend densities. Thus the Board finds no basis for a  
22 determination that Poulsbo's Comprehensive Plan frustrates GMA Goals 1 and 2 or creates  
23 sprawl.

24  
25  
26 Petitioners also state that the low densities in the Plan will not support multi-modal  
27 transportation systems and thus frustrate Goal 3. The Board notes that in general higher  
28 residential densities are associated with public transit, whereas a "multi-modal" system also  
29 includes pedestrian and bicycle modes, which are not density-dependent. The  
30

31  
32  

---

<sup>210</sup> Order on Dispositive Motions (May 11, 2010), at 7.

<sup>211</sup> Lee Ex. Email #2.

1 Transportation Element of the City's Plan includes bike and pedestrian improvements.<sup>212</sup>  
2 With respect to transit, the City Plan focuses on providing efficient park and ride access to  
3 the ferry system – perhaps the major component of Poulsbo's commuter traffic, regardless  
4 of zoned density.<sup>213</sup> Poulsbo also hosts a transfer station for Kitsap Transit, where  
5 passengers can connect with transit around the County and to Jefferson County. *Id.* In sum,  
6 the Board finds no basis for a determination that Poulsbo's Plan provisions frustrate GMA  
7 Goal 3.  
8

9  
10 Finally, Petitioners assert that the City's Plan does not support the affordable housing goal –  
11 Goal 4. Petitioners argue that development in Poulsbo comes at the expense of other  
12 communities, particularly the City of Bremerton, where less expensive housing is available  
13 and infill is needed.<sup>214</sup> In its Order on Supplementation, the Board pointed out that the GMA  
14 lacks any requirement for cities to balance their plans to accommodate growth with the  
15 economic needs of neighboring cities, however desirable that might be. Ideally, Countywide  
16 Planning Policies might address inequities between communities, but the GMA imposes no  
17 independent duty on each city.<sup>215</sup> In the absence of specific Countywide Planning Policies,  
18 the Board has no jurisdiction to consider questions of development competition between  
19 cities.<sup>216</sup>  
20

21  
22 The Board notes that the Poulsbo Plan in Chapter 7, Housing, contains a full menu of  
23 options for housing to meet a range of needs – senior housing and assisted living,  
24 manufactured homes, a self-help housing program, accessory dwelling units, townhomes  
25 and cottages, options for small-lot infill, and more. In sum, the Board finds no basis for a  
26 determination that Poulsbo's Plan provisions frustrate GMA Goal 4.  
27  
28  
29

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30 <sup>212</sup> Comp Plan at 78-79.

31 <sup>213</sup> *Id.* at 79-80.

32 <sup>214</sup> Wold HOM Brief, at 27.

<sup>215</sup> See RCW 36.70A.210(3).

<sup>216</sup> Order on Supplementation (May 11, 2010), at 13, citing *Bothell v. Snohomish County*, CPSGMHB Case No. 07-3-0026c, Final Decision and Order (Sep. 17, 2007), at 50-54.

1 Conclusion

2 The Board concludes that Petitioners **failed to carry their burden of proof** in  
3 demonstrating that Poulsbo's adoption of Ordinance 2009-14 was not guided by RCW  
4 36.70A.020 (1), (2), (3), or (4). Legal Issue 14 is **dismissed**.  
5

6 **E. CONSISTENCY AND COORDINATION**

7  
8 Petitioners object to internal inconsistencies in the 2009 Comprehensive Plan, as well as  
9 inconsistencies with County-Wide Planning Policies. Issue 29 addresses consistency with  
10 the Capital Facilities Plan and is discussed within Section G – Capital Facilities. As noted in  
11 Section V – Preliminary Matters, Issue 31 has been withdrawn.  
12

13 

- **Consistency and Coordination within City Comprehensive Plan and to the**

  
14 **CPPs**

15 As set forth in the Board's Prehearing Order, Issues 27, 28, and 30 provide:  
16

17 Did the City of Poulsbo, by the adoption of Ordinance 2009-14:

18 **Issue 27:** *Fail to be guided by and comply with RCW 36.70A.070 (Preamble and*  
19 *Mandatory Elements), which requires consistent plans when, for example, not all*  
20 *elements of the CP are consistent with the Future Land Use map, and when the City*  
21 *reduced available gross acreage for development to account for critical areas, but*  
22 *failed to increase net density when it adopted new Planned Residential Development*  
23 *(PRD) regulations with bonus density adjacent to critical areas and adopted the new*  
24 *requirements for cul-de-sacs, roads and driveways that also result in added density?*  
25 *[Wold Issue 3 and 6]*

26 **Issue 28:** *Violate RCW 36.70A.070 when its plans were not consistent, for example,*  
27 *between Policy LU-2.1 and Policy LU-2.2 thru LU-2.8, and Goal LU-10 and Policies*  
28 *LU-10.1 and LU-10.2 are inconsistent with Element E and Element F of the adopted*  
29 *Kitsap CWPP's? [Lee 4.22 and 4.24]*

30 **Issue 30:** *Violate RCW 36.70A.172 and 36.70A.070 when, for example, its CAO is*  
31 *inconsistent with the Natural Environment Element of the CP (Chapter 5<sup>217</sup>) and its*  
32 *Land Capacity Analysis methodologies (net vs. gross density calculations) are*

---

<sup>217</sup> The Board addressed the question of consistency between the Natural Environment Element and the CAO under Section B, Legal Issue 8, above.

1 *inconsistent/uncoordinated with Kitsap County CWPP's, Buildable Lands Analysis,*  
2 *Sub-Area Plan, and County methodologies (Comp Plan, Appendix A-1/A-2, Appendix*  
3 *C-1, C-2, C-3; SEIS; Comp Plan Chapter 2 Land Use; Comp Plan chapter 14 Land*  
4 *Development Review & Evaluation)? [Wold Issues 15 and 1G and Lee 4.23, 4.29, 4.3*  
5 *and 4.4]*

6 Applicable Law

7 RCW 36.70A.070 (preamble) requires:

8 [T]he plan shall be an internally consistent document and all elements shall be  
9 consistent with the future land use map.

10  
11 Positions of the Parties

12 Wold asserts "a lack of congruity and inconsistency between the SEIS, the Comprehensive  
13 Plan, and the Buildable Lands analysis."<sup>218</sup> However, their brief provides no specific facts  
14 other than the examples in the issue statements themselves. Wold concludes: "The City's  
15 growth is uncoordinated. The Comp Plan, BLA, Sub-Area Plan and SEIS have conflicting  
16 densities, conflicting and uncoordinated approaches to population and population  
17 growth."<sup>219</sup>

18  
19 Lee argues in Legal Issue 28 that the City's Land Use Policy LU 2.1 identifies minimum and  
20 maximum densities for land use designations by reference to minimum *net* du/acre and  
21 maximum *gross* du/acre.<sup>220</sup> Lee contends this is inconsistent with the future land use map  
22 which does not distinguish between gross/net. Lee also contends the City has failed to  
23 "show its work" concerning the Land Capacity Analysis.<sup>221</sup> Lee further asserts that the  
24 Comprehensive Plan policies for maximizing urban densities and "reasonable measures" to  
25 increase infill development "will propel the population figure well beyond the 14,808 persons  
26 allocated" by 2025.<sup>222</sup> Lee states that this is an inconsistency in the Plan.  
27  
28

29  
30 \_\_\_\_\_  
31 <sup>218</sup> Wold HOM Brief, at 44.

32 <sup>219</sup> *Id.* at 46.

<sup>220</sup> Lee HOM Brief, at 18.

<sup>221</sup> *Id.* at 19.

<sup>222</sup> *Id.*

1 The City points out that neither Petitioner has provided any comparative analysis of specific  
2 Comprehensive Plan provisions that demonstrate inconsistency.<sup>223</sup> According to the City,  
3 these issues should be deemed abandoned.<sup>224</sup> Nevertheless, the City indicates that it has  
4 shown its work concerning its LCA methodology.<sup>225</sup>  
5

6  
7 Board Discussion and Analysis

8 While Petitioners' legal issues concerning consistency are inexpertly argued, the Board  
9 understands that Petitioners have a continuing objection to the City's past errors in  
10 population count and to the density provisions of the City's 2009 Comprehensive Plan. The  
11 Board finds that the City's planning documents properly distinguish between "designation" in  
12 the land use plan and "zoning" in the enacted development regulations. The designations  
13 are more general and the zoning regulations are more specific. Despite Lee's concerns  
14 about possibilities for confusion, this is not an inconsistency.  
15

16  
17 As the Board explained under Legal Issues 22 through 24 above, the Buildable Lands  
18 Review looks back over a city's on-the-ground development in the past five years, while a  
19 Land Capacity Analysis projects how much development may be accommodated on  
20 available urban land in the future. The density assumptions in the LCA looking forward won't  
21 necessarily be the same as the BLR experience looking back. Here, the City LCA adopted a  
22 "worst case" scenario and still will be able to accommodate all the assigned growth to 2025.  
23 Similarly, the SEIS should evaluate a range of density assumptions and projections. These  
24 are not inconsistencies.  
25

26  
27 Finally, Lee points out that, at the higher densities indicated by recent development trends,  
28 the City may be able to accommodate significantly more urban growth than the 14,808  
29  
30

31  
32 <sup>223</sup> City Response Brief, at 43.

<sup>224</sup> *Id.* at 45.

<sup>225</sup> *Id.* citing Index 255 at 251-257 and Appendices C-1 and C-2.

1 currently allocated.<sup>226</sup> However, the Board notes that OFM forecasts and County allocations  
2 to cities do not create a maximum. Rather, if Poulsbo absorbs more growth at greater  
3 densities, there will be no need to expand the UGA, thus reducing sprawl. This does not  
4 create an inconsistency.

#### 6 Conclusion

7 The Board concludes that Petitioners **failed to carry their burden** in demonstrating that  
8 Poulsbo's adoption of Ordinance 2009-14 failed to comply with the consistency  
9 requirements of RCW 36.70A.070(preamble). Legal Issues 27, 28, and 30 are **dismissed**.

#### 11 **F. PROPERTY RIGHTS**

13 As set forth in the Board's Prehearing Order, Issue 32 states:

14 ***Issue 32:** Did the City of Poulsbo, by adoption of Ordinance 2009-14: Violate RCW*  
15 *36.70A.020(6) and 36.70A.370 by designating certain areas within the UGA and the*  
16 *City as "open space" because these areas are available for the City's use through*  
17 *eminent domain after an indeterminate span of time, thus violating property rights?*

#### 18 Applicable Law

19 RCW 36.70A.020(6) is the GMA's goal related to private property rights and provides:

21 Property rights. Private property shall not be taken for public use without just  
22 compensation having been made. The property rights of landowners shall be  
23 protected from arbitrary and discriminatory actions.

24 RCW 36.70A.370 sets forth not only a requirement that the Attorney General establish a  
25 process by which local governments can evaluate proposed actions to assure that such  
26 actions do not result in an unconstitutional taking of private property but, also that local  
27 governments shall utilize this process.<sup>227</sup> The Attorney General has established a process  
28 with its 2006 advisory memorandum - Avoiding Unconstitutional Takings of Private Property.

31  
32 <sup>226</sup> Lee Response, at 11.

<sup>227</sup> RCW 36.70A.370(1) – Attorney General duty to establish a process; 36.70A.370(2) – Requirement for local government to utilize the established process.

1 Position of the Parties

2 Lee asserts it is the City's intention to exercise eminent domain over the property  
3 designated as "Open Space" in Chapter 8 (Parks, Recreation and Open Space) of the  
4 Comprehensive Plan, specifically the open space along the Johnson Creek Corridor.<sup>228</sup>  
5 Additionally, they assert the Comprehensive Plan, the 6-year CIP and the Capital Facilities'  
6 plan do not contain specific analysis as to the method of payment the City will utilize to  
7 acquire the Johnson Creek open space.<sup>229</sup>  
8

9  
10 The Petitioner's conclude that because the City has not provided analysis on method of  
11 payment, the corridor has not been identified in the 6-year CIP and the need for City open  
12 space parks, "the City intends to somehow facilitate, thru regulatory takings, the acquisition  
13 of open space corridors in general and the Johnson Creek Corridor specifically."<sup>230</sup>  
14

15 The City acknowledges that while the acquisition of the open space along Johnson Creek is  
16 listed on the unfunded 20-year Park System and Improvement List there is nothing in that  
17 list which suggests eminent domain would be the means of acquisition of the property.<sup>231</sup> In  
18 addition, the City points to Policy CF-6.3 in the Capital Facilities Element of the 2009  
19 Comprehensive Plan that acknowledges the locations of the capital facilities in the City's  
20 "functional plans" are "conceptual" only and that the location and construction of such  
21 facilities "will be based upon topography, final engineering design, and *property owner*  
22 *willingness.*"<sup>232</sup>  
23  
24

25 The City argues the Petitioners' contention that because the Johnson Creek corridor is not  
26 identified in the City's 6-year CIP, the City intends to acquire the land through "regulatory  
27  
28  
29

30  
31 <sup>228</sup> Lee HOM Brief at 22-23

32 <sup>229</sup> Lee HOM Brief at 22-23

<sup>230</sup> Lee HOM Brief at 23

<sup>231</sup> City Response Brief to Lee at 10

<sup>232</sup> City Response Brief to Lee at 10

1 takings” is not true.<sup>233</sup> The City argues the acquisition is simply not needed or expected to  
2 occur in the contemplated 6 year time frame of the CIP.<sup>234</sup>

3  
4 The Petitioners, in their reply, advance new arguments not framed in the original Petition for  
5 Review, specifically arguing that RCW 36.70A.160 is unconstitutionally vague. The City  
6 subsequently moved to strike the additional raised issue which was granted *supra*.

7  
8 Board Discussion and Analysis

9 After review of the record, the Board can find no evidence that the City contemplates the  
10 taking of the property in question by eminent domain.

11  
12 The Board notes that Petitioners’ property rights concern arises from two maps in Chapter 8  
13 of the Comprehensive Plan. The Citywide Park Trail and Open Space Map, Figure PRO-1,  
14 “identifies open space corridors required to be identified by RCW 36.70A.160.” The 2025  
15 Park Development and Land Acquisition Goals, Figure PRO-2, identifies “generalized  
16 geographic areas identified for future park and open space acquisition” and lists 17 areas,  
17 including “Open Space acquisition along Johnson Creek corridor.” The City’s Capital  
18 Facilities Plan states: “Acquisition of undeveloped parcels of land along Johnson Creek  
19 corridor and within the city limits, as they become available for purchase, would provide  
20 additional open space in this area.”<sup>235</sup> The Board notes that while the City’s maps include  
21 and identify open space lands in the adjacent UGA, the City does not have authority for  
22 regulations or acquisitions outside its boundaries. The City’s policy appropriately limits its  
23 potential acquisition in the Johnson Creek Corridor to parcels “within the city limits, as they  
24 become available for purchase.”<sup>236</sup>  
25  
26  
27  
28

29  
30 <sup>233</sup> City Response Brief to Lee at 10-11

31 <sup>234</sup> City Response Brief to Lee at 10-11

32 <sup>235</sup> Comp Plan, at 219. The Board further notes that the GMA requirement in RCW 36.70A.160 for cities to  
identify open space corridors is very carefully crafted to ensure protection of interests of private property  
owners in the use and value of such land. Here, the City’s maps identify very broad “generalized” areas, not  
specific properties.

<sup>236</sup> Comp Plan, at 219.

1 GMA Goal 6, related to property rights prohibits taking of private property without “just  
2 compensation.” Here, the City’s policy clearly contemplates purchase, as property becomes  
3 available, i.e., from a willing seller. GMA Goal 6 also protects landowners from “arbitrary and  
4 discriminatory action.” Here, Petitioners have not demonstrated that the City’s action in  
5 identifying open space corridors and potential acquisitions is either arbitrary or  
6 discriminatory.  
7

8 GMA section 36.70A.370 requires local governments to utilize a process developed by the  
9 Attorney General’s Office to determine whether an action constitutes an unconstitutional  
10 taking. Here, the City has incorporated that process in its plan at Policy PI-2.6<sup>237</sup> and Policy  
11 NE 1.7.<sup>238</sup>  
12

### 13 Conclusion

14  
15 The Board concludes that Petitioners **failed to carry their burden** in demonstrating that  
16 Poulsbo’s action in adoption of Ordinance 2009-14 failed to be guided by RCW  
17 36.70A.020(6) or violated RCW 36.70A.370. Legal Issue 32 is **dismissed**.  
18

## 19 **G. CAPITAL FACILITIES**

20 Petitioners present several issues concerning Capital Facilities. Issues 34(a) and 34(b)  
21 relate to water supply, Issues 34(c) and 34(d) relate to transportation facilities, Issue 35  
22 relates to parks and recreation, and Issue 29 addresses the requirement for consistency.  
23 The Board will address these issues as presented to the Board.  
24

### 25 **• Domestic Water Supply**

26  
27 As set forth in the Board’s Prehearing Order, Issues 34(a) and 34(b) provide:  
28  
29

---

30 <sup>237</sup> Policy PI 2.6. Ensure the City’s development regulations do not result in an unconstitutional taking of  
31 private property by ensuring City staff are familiar with Washington State Attorney General’s “warning signals”  
for unconstitutional takings of private property. Comp Plan at 169.

32 <sup>238</sup> Policy NE 1.7. City regulated environmental protection cannot constitute a legal “takings” of land and the  
City must provide provisions for reasonable use of property according to legal precedent and law. Comp Plan,  
at 88.

1 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

2 **Issue 34(a):** *Did the City violate RCW 36.70A.020(12), 36.70A.070(3),*  
3 *36.70A.070(4), 36.70A.070(6)(a)(iii)(D), 36.70A.070(6)(a)(iv)(C) and 36.70A.120 by*  
4 *not demonstrating that it has sufficient water supply, capacity, and water rights to*  
5 *meet the forecasted population projections for the UGA and failing to reassess the*  
6 *land use element because of this water supply shortfall as noted in Chapter 13*  
7 *Capital Facilities Plan, Appendix B-1 Water Supply System Plan, and Policy CF-3.1?*

8 **Issue 34(b):** *Did the City violate RCW 36.70A.070(12), 36.70A.070(3),*  
9 *36.70A.070(4), 36.70A.070(6)(a)(iii)(D), 36.70A.070(6)(iv)(C) and 36.70A.120 by not*  
10 *accounting for the conversion of existing homes within the City and the UGA,*  
11 *currently using private wells and septic systems, to City water and sewer as*  
12 *mandated by City policy?*

13 Applicable Law

14 The text of RCW 36.70A.020(12) is set forth *supra*, in Section D – Annexation and  
15 Sequential Growth.

16 RCW 36.70A.070(3) lists the components for a Capital Facilities Plan Element which  
17 include:

18 A capital facilities plan element consisting of:

- 19 (a) An inventory of existing capital facilities owned by public entities, showing  
20 the locations and capacities of the capital facilities;  
21 (b) a forecast of the future needs for such capital facilities;  
22 (c) the proposed locations and capacities of expanded or new capital facilities;  
23 (d) at least a six-year plan that will finance such capital facilities within  
24 projected funding capacities and clearly identifies sources of public money for  
25 such purposes; and  
26 (e) a requirement to reassess the land use element if probable funding falls  
27 short of meeting existing needs and to ensure that the land use element,  
28 capital facilities plan element, and financing plan within the capital facilities  
29 plan element are coordinated and consistent.

30 Park and recreation facilities shall be included in the capital facilities plan element.

31 RCW 36.70A.070(4) lists the components for a Utilities Element:  
32

1 A utilities element consisting of the general location, proposed location, and  
2 capacity of all existing and proposed utilities, including, but not limited to,  
3 electrical lines, telecommunication lines, and natural gas lines.

4 RCW 36.70A.070(6) sets forth the required components for a Transportation Element, for  
5 which, Petitioners focus only on two provisions:  
6

7 RCW 36.70A.070(6)(a) The transportation element shall included the following  
8 sub-elements:

9 (iii) Facilities and services needs, including:

10 ...  
11 (D): Specific actions and requirements for bringing into compliance locally  
12 owned transportation facilities or services that are below an established  
13 level of service standard.

14 (iv) Finance, including:

15 ...  
16 (C) If probably funding falls short of meeting identified needs, a discussion  
17 of how additional funding will be raised, or how land use assumptions will  
18 be reassessed to ensure that level of service standards will be met.

19 RCW 36.70A.120 requires that planning activities and capital budget decisions are to be  
20 implemented in conformity with a jurisdiction's comprehensive plan.

21 Position of the Parties.<sup>239</sup>

22 Wold asserts the City's 2009 Comprehensive Plan is deficient in three main areas regarding  
23 their Capital Facilities Planning. Both Wold and Lee challenge the Capital Facilities Element,  
24 Transportation Element and the Utilities Element.  
25

26 Wold, after setting forth text containing the components of the Capital Facilities Plan  
27 Element (.070(3)), the Utilities Element (.070(4)), the Transportation Element (.070(6)), and  
28 the GMA's goal related to public facilities and services (.020(12)), contends the City cannot  
29 fund sewer costs nor provide adequate water.<sup>240</sup> To support their assertion as to water  
30  
31

32  
<sup>239</sup> Wold submits argument as to Issue 34(a); Lee submits argument as to both Issue 34(a) and 34(b).

<sup>240</sup> Wold HOM Brief at 46-47 citing Exhibit Email 1.

1 supply, Wold states that although the City relies on Kitsap Public Utility District #1 (KPUD) it  
2 has no agreement on how water availability will be provided.<sup>241</sup> .

3  
4 Just as Wold did, Lee opens by setting forth the text of the RCWs,<sup>242</sup> but also citing RCW  
5 36.70A.120 and GMA Goal 12.<sup>243</sup> Also like Wold, Lee focuses on water supply and sewer  
6 services. Lee cites to various exhibits to demonstrate the City's inability to provide these  
7 essential public services and also notes the City's reliance on KPUD.<sup>244</sup> Lee further points  
8 to the City's 2007 Water System Plan which they assert contains flaws in its analysis related  
9 to private wells and the impact of impervious coverage on aquifer recharge.<sup>245</sup> Lee  
10 contends the City has no guarantee from KPUD, only a Memorandum of Understanding  
11 (MOU) which has expired, leaving the City with an insufficient water supply system to  
12 support its 2025 population.<sup>246</sup>

13  
14  
15 The City notes first,<sup>247</sup> neither Wold nor Lee contends the Capital Facilities Plan Element,  
16 the Utilities Element, or the Transportation Element does not contain the specific sections  
17 and policies required by the GMA.<sup>248</sup> Rather, the City contends, both Petitioners rely on a  
18 single email exchange to support their assertion that the City has an insufficient water  
19 supply and sewer funding.<sup>249</sup> The City argues this email predated the completion of its  
20 efforts in updating the Comprehensive Sewer Plan, Comprehensive Stormwater  
21 Management Plan, the LCA, and entering into an agreement with KPUD.<sup>250</sup> Poulsbo also  
22 states its water supply is not solely based on KPUD but also incorporates other measures to  
23 secure water supply such as improvements to existing wells.<sup>251</sup> In addition, the City  
24  
25

---

26  
27 <sup>241</sup> Wold HOM Brief at 57-48.

28 <sup>242</sup> Lee HOM Brief at 24-25

29 <sup>243</sup> Lee HOM Brief at 25

30 <sup>244</sup> Lee HOM Brief at 25-26, citing Lee Exhibits 5, 52, 33, 66, 67, and Email 1.

31 <sup>245</sup> Lee HOM Brief at 26-27, citing Exhibit 255.

32 <sup>246</sup> Lee HOM Brief at 27-28 , citing to Exhibit 67 and 255.

<sup>247</sup> City Response to Lee at 11

<sup>248</sup> City Response to Wold at 45-46

<sup>249</sup> City Response to Wold at 46

<sup>250</sup> City Response to Wold at 46

<sup>251</sup> City Response to Wold at 47.

1 contends no evidence was presented that KPUD does not have sufficient water or would not  
2 work with the City to fulfill its needs.<sup>252</sup>

3  
4 The City explains that the Jeff Bauman letter relied upon to demonstrate lack of water  
5 availability is related only to a preliminary plat approval which predated both the MOU with  
6 KPUD and the 2009 Comprehensive Plan Update and that it does not relate to the City's  
7 overall water supply.<sup>253</sup> In regards to the City's Water System Plan, the City argues its  
8 plans for the 2025 population projection take into consideration private wells as well as the  
9 ability to develop other projects.<sup>254</sup> As to the MOU with KPUD, the City contends it has not  
10 expired and there is no evidence that the parties will not carry this MOU out.<sup>255</sup> In sum, the  
11 City states it has provided a full, detailed plan for its water service needs through the 20-  
12 year planning horizon as required by the GMA.  
13

14  
15 Lee, in their reply, assert that the City is playing a shell game with the requirements for new  
16 developments by providing for the potential that while water might be available at  
17 preliminary plat approval, it may not be available at the time of building permit approval.<sup>256</sup>  
18 Lee reasserts that a water supply shortfall has been identified, this isn't resolved by the  
19 MOU with KCPUD, and the City has been unable to permanently secure water supply to  
20 serve the City's projected population by 2025.<sup>257</sup>  
21

### 22 Board Discussion and Analysis

23  
24 The Board once again acknowledges the effort and work both Wold and Lee have invested  
25 in preparing for this case. Few *pro se* petitioners put forth the work and provide the analysis  
26 that the current petitioners provide. In this set of issues, the Petitioners challenge the  
27 Capital Facilities, Transportation and Utilities Element of the 2009 Comprehensive Plan.  
28

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29  
30 <sup>252</sup> City Response to Wold at 47.

31 <sup>253</sup> City Response to Lee at 11-12, citing Lee Exhibit 5 and RCW 58.17.110 Preliminary Plat Approval.

32 <sup>254</sup> City Response to Lee at 12-13.

<sup>255</sup> City Response to Lee at 13.

<sup>256</sup> Lee Reply at 15.

<sup>257</sup> Lee Reply at 15-16.

1 While all three elements are challenged, the focus of the Petitioners centers on water supply  
2 which is contained under the Capital Facilities Plan element. The Board finds nothing in  
3 either Wold or Lee's briefing to support their alleged inadequacy as to the provision of  
4 sewer; this aspect of Issue 34(b) is deemed abandoned. In addition, the Board finds  
5 nothing in the briefing related to the provisions of .070(4) and .070(6) cited in the issue  
6 statements; therefore, these aspects of Issues 34(a) and 34(b) are deemed abandoned.  
7

8 The Petitioners focus much of their presentation and argument on a 2008 memo from Public  
9 Works Director Bauman concerning when to guarantee water availability (plat approval or  
10 building permit) and email exchanges between elected leaders and staff in 2008 concerning  
11 the potential expansion or contraction of the UGA as purported evidence the City is unable  
12 to supply or fund needed improvements. However, the Board believes Wold and Lee draw  
13 too strong a conclusion from the memo and emails as to potential problems the City will  
14 have with its water supply. As the City asserts, the real test for planning and funding was not  
15 "on the table" in 2008. In fact, the record demonstrates that throughout 2008 the City was  
16 developing a series of studies and analyses leading to the various pieces that would  
17 ultimately become part of the 2009 Comprehensive Plan. These included the updated  
18 Sewer and Storm Water Plans and new water supply arrangements. The City acknowledges  
19 that it "needs to complete a long-term water supply study."<sup>258</sup> If it cannot obtain assured  
20 supplies, "it has the option of revising its long term plan."<sup>259</sup>  
21  
22  
23

24 A careful review by the Board finds the capital facilities planning and potential funding is in  
25 place as required in the 2009 Comprehensive Plan.<sup>260</sup> While the Petitioners clearly do not  
26 agree with the City, the GMA provides in RCW 36.70A.070(3)(e) "a requirement to reassess  
27 the land use element if probable funding falls short of meeting existing needs to ensure that  
28 the land use element, capital facilities plan element and financing within the capital facilities  
29

30  
31 <sup>258</sup> HOM Transcript, at 67.

<sup>259</sup> HOM Transcript, at 69.

32 <sup>260</sup> See City Exhibit 2 - Six Year TIP; Wold Exhibit 3 - Six Year CIP; City of Poulsbo Comprehensive Plan,  
Section 2 - Capital Facilities Plan; City of Poulsbo Comprehensive Plan - Appendix B (Water System Plan,  
MOU with KPUD, Sanitary Sewer Plan, Transportation Plan, Parks and Recreation Plan).

1 plan element are coordinated and consistent....” In other words the City, on an ongoing  
2 basis, will assess the viability of its Comprehensive Plan and make needed adjustments as  
3 various projects and obligations come on line.

4  
5 The Board finds that the City of Poulsbo satisfies the GMA requirements in the preparation  
6 and methodology to implement the Capital Facilities Plan Element of the 2009  
7 Comprehensive Plan as it relates to water supply. Since the Board finds no error in the  
8 City’s planning efforts, Lee’s alleged violation of RCW 36.70A.120 fails.

9  
10 Conclusion

11 The Board finds and concludes Petitioners **failed to carry their burden of proof** in  
12 demonstrating that the adoption of Ordinance 2009-14 violated RCW 36.70A.070(3),  
13 .070(4), .070(6), .120 or was failed to be guided by RCW 36.70A.020(12). Issues 34(a)  
14 and 34(b) are **dismissed**.

15  
16  
17 • **Transportation Facilities**

18 As set forth in the Board’s Prehearing Order, Issues 34(c) and 34(d) provide:

19 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

20  
21 **Issue 34(c):** *Did the City violate RCW 36.70A.020(12), 36.70A.070(4),*  
22 *36.70A.070(6)(a)(iii)(D), 36.70A.070(6)(a)(iv)(C) and 36.70A.120 by not having*  
23 *specific plans to bring deficient roads and intersections up to the City’s Level of*  
24 *Service (LOS) minimums and a discussion of how additional funds will be raised or*  
25 *land use plans modified to address LOS deficiencies.*

26  
27 **Issue 34(d):** *Did the City violate RCW 36.70A 020(12), 36.70A.070(3), 36.70A.070(4),*  
28 *36.70A.070.6(a)(iii)(D), 36.70A.070(6)(iv)(C) and 36.70A.120 by failing to ensure*  
29 *adequacy of public facilities and services without decreasing current levels of*  
30 *services and by not performing its activities and making capital budget decisions that*  
31 *conform to its CP when, for example, the City has not had adequate funding*  
32 *available to maintain existing roads and has told citizens that it has no money*  
*available to maintain roads in newly-annexed UGA’s where roads were maintained*  
*for decades by Kitsap County?*

Applicable Law

1 The text of RCW 36.70A.020(12) is set forth *supra*, in Section D – Annexation and  
2 Sequential Growth.

3  
4 The text of RCW 36.70A.070(3), .070(4), the relevant provisions of .070(6), and .120 are set  
5 forth *supra* within this section in the Applicable Law section related to Legal Issues 34(a)  
6 and 34(b).

7  
8 *Position of the Parties*

9 Petitioners argue that the City has exempted certain streets from concurrency LOS  
10 standards, citing TR-2.1 of the Comp Plan. They point out that Ordinance No. 2007-19  
11 established a LOS E for all streets owned by the City of Poulsbo, in order to serve as a  
12 gauge to judge performance of the City's transportation system.

13  
14 Petitioners further assert that certain City intersections have been designated LOS F and  
15 with that designation, the Comp Plan allows for a de facto exemption for concurrency to  
16 these specific intersections and street legs. They assert that the language allows for future  
17 road and intersections for LOS F designations.

18  
19  
20 Petitioners contend that at this time lowering the LOS is in conflict with the 2006  
21 Transportation Plan Update, as it says, "There is no need to consider lowering the adopted  
22 transportation level of services standard until TDM strategies have been fully tested at some  
23 future date."

24  
25 Finally, the Petitioners assert that based on a December 2009 letter from John Chris, the  
26 City lacks funds to maintain LOS in newly annexed areas and that the county was  
27 maintaining LOS that the City is unable to provide.

28  
29  
30 The City argues that TR-2.1 establishes a concurrency level of service (LOS) standard of  
31 LOS E for all City streets except "local streets designated Residential Collector and  
32 Residential Access". The City asserts that not only does RCW 36.70A(6)(a)(iii)(B) require

1 LOS standards only for “all locally owned arterials and transit routes” but that it has broad  
2 discretion in selecting what it deems an appropriate LOS for the community. Thus,  
3 establishing LOS F at certain intersections does not violate the GMA.  
4

5 The City also asserts there is no conflict in the 2006 Transportation Plan and the 2009  
6 Comprehensive Plan. The City states the Transportation Plan provides three options to  
7 consider in setting 2025 LOS; one of those being relaxing the LOS. The City made the  
8 choice to relax the LOS as opposed to waiting to lower the LOS upon TDM testing.  
9

10 Petitioners reply that while the City argues that LOS F is acceptable, it is an “end run”,  
11 arguing the minimum standard has no outer bound without consequence. Petitioners  
12 contend there is a violation of “The Spirit and the Law” of transportation concurrency  
13 requirements by the City’s action.  
14

15  
16 Board Discussion and Analysis

17 Under the GMA, cities are granted board discretion in establishing levels of service within  
18 their jurisdiction. The Petitioners acknowledge that fact in their Reply Brief at 17. RCW  
19 36.70A.070(6)(a)(iii)(B) is clear that facilities and service needs include “Level of service  
20 standards for locally owned arterials and transit routes to serve as a gauge to judge  
21 performance of the system.” The City has satisfied that requirement by identifying LOS E for  
22 all streets other than residential collector and residential access streets. The City also has  
23 the discretion to establish LOS F at certain intersections. As the Board has ruled previously  
24 in *West Seattle Defense Fund v. City of Seattle*,<sup>261</sup> “Establishing a level of service (LOS)  
25 methodology for arterial and transit routes, like calibrating a thermometer, is simply an  
26 objective way to measure traffic. That is all the Act requires establishing, it does not dictate  
27 what is too congested.”  
28  
29  
30  
31  
32

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<sup>261</sup> Case No. 94-3-0016, FDO (April 4, 1995).  
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1 The Board does not find inconsistency in the funding for the South Viking Avenue street  
2 project. While the project does not appear on the long term 2025 Capital Facilities Project  
3 Plan, it does appear in the 6 year Capital Improvement Project list in the 2009  
4 Comprehensive Plan. The project is scheduled for completion in 2010.

5  
6 Finally, the Board declines to conclude, from the letter of one unhappy citizen, that the City  
7 has failed to maintain streets in annexed areas.  
8

9 Conclusion

10 The Board concludes that Petitioners **failed to carry their burden of proof** in  
11 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 failed to be guided by  
12 RCW 36.70A.020(12) and violated RCW 36.70A.070(3), .070(4), the cited provisions of  
13 .070(6), and .120. Issues 34(c) and 34(d) are **dismissed**.  
14

15  
16 • **Parks and Recreation**

17 As set forth in the Board's Prehearing Order, Issue 35 provides:  
18

19 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

20 **Issue 35:** *Did the City violate RCW 36.70A.070(3), 36.70A.070(6), 36.70A.070(8) by*  
21 *failing to accurately and adequately identify funding sources in the 2009 6-year*  
22 *Capital Improvement Plan, failing to meet goal CF-4 and Policies CF-4.1 thru CF-4.3*  
23 *and by arbitrarily choosing the identified funding sources in the Capital Facilities*  
24 *Plan?*

25 The Board addressed transportation funding *supra* in Issue 34c and 34d and therefore this  
26 response is limited to Capital Facilities Planning in relationship to Parks and Recreation.  
27

28 Applicable Law

29 RCW 36.70A.070(3) sets forth the components of a Capital Facilities Plan Element and, in  
30 relevant part, provides:  
31

32 A capital facilities plan element consisting of:  
...

1 (d) at least a six-year plan that will finance such capital facilities within projected  
2 funding capacities and clearly identifies sources of public money for such purposes;  
3 and

4 ...

5 Park and recreation facilities shall be included in the capital facilities plan element.

6 RCW 36.70A.070(8) sets forth the components of a Park and Recreation element and  
7 provides:

8 A park and recreation element that implements, and is consistent with, the capital  
9 facilities plan element as it relates to park and recreation facilities. The element shall  
10 include:

- 11 (a) Estimates of park and recreation demand for at least a ten-year period;  
12 (b) an evaluation of facilities and service needs; and  
13 (c) an evaluation of intergovernmental coordination opportunities to provide  
14 regional approaches for meeting park and recreational demand.

15 Positions of the Parties

16 Lee asserts the City has a history of placing unfunded parks and recreation projects in the  
17 Capital Improvement Plan (CIP), something which is demonstrated by reviewing the CIP for  
18 2007-2009. Lee further asserts that park projects are “bumped” down, presumably because  
19 of lack of funding. Lee argues that the quantity of projects was inconsistent in various 6  
20 year plans, ranging from 17 projects in 2007-2012, 18 projects in 2008-2014, to 5 projects in  
21 2110-2015. In addition, Lee asserts that related costs have not been quantified for parks  
22 acquisition based upon LOS information.<sup>262</sup>

23  
24  
25 The City argues that the Parks Element in the Comprehensive Plan is consistent with the  
26 Six-Year CIP. The City points out that only the Six-Year CIP requires funding to be in place  
27 and is in place in the 2009 Comprehensive Plan. As part of the Comp Plan, long term  
28 improvements to 2025 require only that a “funding strategy” be in place.  
29  
30  
31  
32

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<sup>262</sup> Lee HOM Brief at 32  
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1 The City cites to its argument set forth in regards to Issue 29 which also alleged the Capital  
2 Facilities Plan was inconsistent with the CIP.<sup>263</sup> The City points out that the GMA sets two  
3 timelines for capital facilities planning – a 20-year planning horizon and a 6-year funding  
4 requirement. In regards to parks, the City contends it has adopted a 2025 Park System  
5 Acquisition and Improvement List, which identifies funding “strategies,” and the Six-Year  
6 CIP which identifies “specific” funding for the listed improvements. The City acknowledges  
7 that previous to the 2009 Comprehensive Plan adoption, it had not used the same two-list  
8 system but based on recommendations from a consultant in the formulation of the 2009  
9 Plan, the City developed the two separate lists.<sup>264</sup>

11  
12 In reply, Lee contends that the City has merely changed the funding designation from  
13 “Unknown/Donation” to “Donation/In Kind”, amounting to window dressing, and indicates a  
14 shortfall is likely and projects will have to be “bumped” down the six-year timeline.<sup>265</sup>

15  
16 Board Discussion and Analysis

17 The review of the Comprehensive Plan serves not only as an opportunity for an entity to  
18 update its goals and policies to reflect current circumstances, including recently enacted  
19 GMA provisions, but also to analyze, revise, and, hopefully, improve on past practices. The  
20 City has taken advantage of this opportunity to update past practices in regards to their  
21 Parks, Recreation and Open Space Plan and CIP. Realizing that their previous practice was  
22 unclear; as to parks prioritization, they have adjusted to keeping the long term plan separate  
23 from the Six-Year CIP. This, the Board believes, was a wise improvement to make and is  
24 not contrary to the GMA.  
25  
26

27  
28 The Petitioners are clearly frustrated by perceived funding inadequacies in the Six Year CIP  
29 for the Parks and Recreation Plan. Opportunities and fiscal restraints will necessarily require  
30 a City to make changes from year to year in its CIP for its parks. While the Lees’ frustration  
31

32 <sup>263</sup> City Brief at 16

<sup>264</sup> City Brief at 9

<sup>265</sup> Lee Reply at 18

1 is understandable, cities and counties have the ability to make adjustments in projected six  
2 year plans as funding sources fail to materialize. They also have the ability to add new  
3 projects as funding might occur that is previously not anticipated.

4  
5 Conclusion

6 The Board concludes that Petitioners **failed to carry their burden of proof** in  
7 demonstrating Poulsbo's action in adoption of Ordinance 2009-14 violated RCW  
8 36.70A.070(3) or 36.70A.070(8). Issue 35 is **dismissed**.

9  
10 • **Adequacy of Capital Facilities**

11  
12 As set forth in the Board's Prehearing Order, Issue 36 provides:

13 ***Issue 36:** Did the City violate RCW 36.70A.020(1, 2, 12) and 36.70A.070(3) in the*  
14 *light of the "adequacy" requirements of Policies CF-3.1 thru CF-3.5<sup>266</sup>?*

15  
16 Applicable Law

17 The provisions of the cited GMA provisions are set forth *supra* - Section D and Section E.

18  
19 Goal CF-3 seeks to provide adequate public facilities and lists four policies to further this  
20 goal. Lee's issue statement makes specific reference only to CF-3.1.1. CF-3.1 provides, in  
21 relevant part:

22 Policy CF-3.1 The City shall ensure that there is adequate long-term capacity for  
23 its water, sanitary sewer, and stormwater utility.

24  
25 CF 3.1.1 Water. The City shall enter into a formal agreement with [KPUD]  
26 agreeing to the coordination of domestic water supplies, storage, and service  
27 areas that ensure water supply capacity for Poulsbo at a minimum for within the  
28 20-year planning period. If the City of Poulsbo cannot, or does not enter, into a  
29 formalized agreement with KPUD and has not otherwise demonstrated adequate  
30 water supply capacity for the 20-year planning period, the City is thereby required  
31 by the GMA to reassess its Land Use Chapter.

32  

---

266 The Board notes Policy CF 3.5 does not exist. The City's comprehensive plan, under Goal CF-3, contains only four policies – CF-3.1, CF-3.2, CF-3.3, and CF-3.4.

1 Position of the Parties

2 Lee cites Goals 1, 2, and 12 of the GMA.<sup>267</sup> Lee asserts the City of Poulsbo has not entered  
3 into an agreement with KPUD so as to guarantee water supply and availability.<sup>268</sup> Lee also  
4 argues they have demonstrated a standard of LOS F for certain traffic intersections which  
5 amounts to an attempt by the City to avoid needed traffic improvements at those  
6 intersections.<sup>269</sup> Lee contends, with that avoidance, the City does not satisfy “adequacy”  
7 under CF-3 and this is supported by arguments presented in regards to Issue 15(b) as to  
8 leapfrog development.<sup>270</sup>  
9

10  
11 Poulsbo asserts it has previously responded to Lee’s allegations in its briefing related to  
12 water supply and Issue 15(b). Thus, the City incorporates those responses here.<sup>271</sup>  
13

14 Board Discussion and Analysis

15 The overarching contention raised in Legal Issue 36, the “adequacy” of the City’s  
16 infrastructure to meet its growing population needs, has been addressed by the Board in a  
17 number of previous issues (see Capital Facilities Issues 34(a) and 34(b) – water; Issues  
18 34(c) and 34(d) - transportation) and in regards to tiered development (see Urban Growth  
19 Areas – Issue 15(b)). Under this issue, Lee once again questions whether Poulsbo violates  
20 its own policies related to “adequate” public facilities – but the answer to this question has  
21 already been provided by the Board, specifically in regards to Lee’s concern regarding the  
22 “adequacy” of water and transportation facilities and the pattern of development, for which  
23 GMA compliance was found.  
24  
25

26 The Board further notes Appendix B-1 of the 2009 Comprehensive Plan is a MOU between  
27 Poulsbo and KPUD that speaks to ensuring sufficient supplies of domestic water for the City  
28  
29

30  
31 <sup>267</sup> Lee HOM Brief at 32

<sup>268</sup> Lee HOM Brief at 32

32 <sup>269</sup> Lee HOM Brief at 32

<sup>270</sup> Lee HOM Brief at 33

<sup>271</sup> City Response Brief to Lee at 16

1 through 2026; this would appear to be the “formalized” agreement referenced in CF-3.1.1  
2 and sought by Lee.

3  
4 Conclusion

5 The Board concludes that Petitioners **failed to carry their burden of proof** in  
6 demonstrating Poulsbo’s action in adoption of Ordinance 2009-14 failed to be guided by  
7 RCW 36.70A.020(1), .020(2), and .020(12) and/or violated RCW 36.70A.070(3). Issue 36 is  
8 **dismissed**.

9  
10 • **Consistency and Coordination – Capital Facilities Plan**

11  
12 As set forth in the Board’s Prehearing Order, Issue 29 provides:

13 *Did the City of Poulsbo, by the adoption of Ordinance 2009-14:*

14  
15 **Issue 29:** *Did the City violate 36.70A.070(3) by failing to have a Capital Facilities*  
16 *Plan that is coordinated with the Financial Plan and violate 36.70A.070(3) and 070(8)*  
17 *when for example, the Parks and Recreation element is not consistent and not*  
18 *coordinated with the Capital Facilities Plan?*

19 Applicable Law

20 The basis for this issue, both in its wording and Wold and Lee’s argument, is the need for  
21 consistency and coordination. In relevant part, RCW 36.70A.070(3) provides, emphasis  
22 added:

23  
24 (e) a requirement to reassess the land use element if probable funding falls short of  
25 meeting existing needs and to ensure that the land use element, *capital facilities plan*  
26 *element, and financing plan within the capital facilities plan element are coordinated*  
27 *and consistent*.

28 Similarly, RCW 36.70A.070(8) provides, in relevant part, emphasis added:

29 A park and recreation element that implements, and *is consistent with, the capital*  
30 *facilities plan element* as it relates to park and recreation facilities ...

31  
32 Position of the Parties:

1 Both Lee and Wold, as well as the City, provided many of the same arguments in  
2 relationship to Capital Facilities Issues 34(a) and 34(b) (water supply/sewer issues and  
3 funding) as well as Capital Facilities Issue 35 (parks and recreation planning and  
4 funding).<sup>272</sup>

5  
6 Wold asserts the City's Capital Facilities Plan is not internally consistent and coordinated  
7 with the City's Financial Plan, using the sewer and water infrastructure funding for the Viking  
8 Avenue Phase 3A/3B as an example. Wold argues the inconsistency is shown by the  
9 change in the City's statements that developers are paying for the improvements and cites  
10 to the 2008 memo from then Public Works Director Jeff Bauman as evidence of a scarcity in  
11 water supply.<sup>273</sup>

12  
13  
14 Lee contends the Capital Improvement Plan (CIP) is the basis for establishing funding in the  
15 Comprehensive Plan and asserts the documents show project "slippage" has occurred with  
16 the CIP.<sup>274</sup> Lee argues the Viking Avenue Phase 3A/3B road upgrade has consistency  
17 conflicts in the Capital Facilities, the TIP and the CIP.<sup>275</sup> Lee points out that the funding for  
18 Viking Avenue is in the 6 year TIP, but not in the transportation chapter or the 2006 TIP. As  
19 for the Parks and Recreation element, Lee contends it has a history of unfunded and  
20 unidentified parks projects. Lee further asserts because of that practice, parks projects tend  
21 to be "bumped", which could lead to further longer term funding issues.<sup>276</sup>

22  
23  
24 The City asserts the Viking Avenue sewer and water improvements are not being funded by  
25 developers. Instead the City cites to Section 12.4.1 of the Capital Facilities Plan (CFP) in  
26 which various funding sources are identified.<sup>277</sup> The City argues that the water and sewer  
27 improvements will be paid for by water and sewer reserves from monthly rates and  
28

29  
30 <sup>272</sup> Lee HOM Brief at 29; Wold HOM Brief at 44-45; City Response Brief to Wold at 44-45; City Response Brief  
to Lee at 7-9.

31 <sup>273</sup> Wold HOM Brief at 45, citing Exhibit 234.

32 <sup>274</sup> Lee HOM Brief at 20

<sup>275</sup> Lee HOM Brief at 20-21

<sup>276</sup> Lee HOM Brief at 21-22

<sup>277</sup> City Response Brief to Wold at 44; City Response Brief to Lee at 7-9.

1 connection projects.<sup>278</sup> The City also contends the Petitioners have not shown how the  
2 2008 memo from Jeff Bauman bears on water supply scarcity and that the memo is not part  
3 of the CFP or CIP.<sup>279</sup> In regards to the Parks Element, the City states Lee has a  
4 misunderstanding of capital planning requirements and lays out the distinction between the  
5 Six-Year CIP and the 2025 Park System List, which although different than the past,  
6 provides a better planning process.<sup>280</sup>  
7

8 Lee replies the North Viking Avenue Improvements were completed with consistency in the  
9 CIP, CFP and the TIP, in contrast to the South Viking Improvements. Lee questions that just  
10 because the South Viking Avenue Improvements are in the process of being completed,  
11 why would internal consistency no longer be needed. Lee asserts there has been a  
12 scramble to obtain federal funding to complete the South Viking Avenue project.<sup>281</sup>  
13  
14

#### 15 Board Discussion and Analysis

16 This Board has previously stated that consistency means provisions are compatible with  
17 each other and one may not create a roadblock, with policies working together in a  
18 coordinated fashion to achieve a common goal.<sup>282</sup> Consistency and coordination do not  
19 equate to a mirror image. And, internal consistency, which is what is required under .070,  
20 involves the consistency between the provisions of one document rather than between two  
21 different documents.<sup>283</sup> As for functional plans, such as TIPs and Water System Plans,  
22 which are intended to fulfill, in whole or in part, GMA requirements, these too must be  
23 consistent with a comprehensive plan.<sup>284</sup> Lastly, the burden rests on Wold and Lee to  
24 identify those provisions of the challenged comprehensive plan that are inconsistent and  
25  
26  
27

28 <sup>278</sup> City Response Brief to Wold at 44.

29 <sup>279</sup> City Response Brief to Wold at 44.

30 <sup>280</sup> City Response Brief to Lee at 9.

31 <sup>281</sup> Lee Reply Brief at 12.

32 <sup>282</sup> See e.g., *WSDF v. Seattle*, Case 94-3-0016, FDO at 27 (April 4, 1995); *Alberg v. King County*, Case No. 95-3-0041c FDO at 17 (Sept. 13, 1995); *Hensley/McVittie v. Snohomish County*, Case No. 01-3-0004c, FDO at 20 (Aug. 15, 2001).

<sup>283</sup> *Assoc. to Protect Anderson Creek v. City of Bremerton*, Case No. 95-3-0053c, FDO at 29 (Dec. 26, 1995).

<sup>284</sup> *Falgatter v. City of Sultan*, Case No. 06-3-0003, FDO at 11-12 (June 26, 2006).

1 uncoordinated. To do this, Wold and Lee must identify the provision and explain how it is  
2 uncoordinated with or inconsistent with another provision.<sup>285</sup>

3  
4 The Board addressed most of the issues raised in Issue 29 in the discussion of Capital  
5 Facilities Issues 34(a) and (b) as well as Issue 35. As part of that review, the Board found  
6 the issue of water supply as well as parks and recreation to be in compliance with the GMA  
7 with regard to the Petitioners' concerns related to planning and funding.  
8

9 Conclusion

10 The Board finds and concludes the Petitioners have not met their burden of proof related to  
11 Capital Facilities Consistency and Coordination in RCW 36.70A.070(3) and .070(8). Issue  
12 29 is **dismissed**.  
13

14 **H. ECONOMIC DEVELOPMENT**

15  
16 As set forth in the Board's Prehearing Order, Issue 38 provides:

17  
18 ***Issue 38:** Did the City of Poulsbo, by adoption Ordinance 2009-14: Fail to be*  
19 *guided by and comply with RCW 36.70A.020(5) when, for example, it adopted a plan*  
20 *and regulation that provided excessively large areas for industrial and commercial*  
21 *development as well as low-density, residential housing sprawl, all of which leads to*  
22 *numerous empty businesses downtown and on Viking Avenue, as well as businesses*  
23 *and housing areas of Bremerton, Washington?*

24 Applicable Law

25  
26 RCW 36.70A.020(5) is the GMA's goal related to economic development and provides:

27 Economic development. Encourage economic development throughout the state  
28 that is consistent with adopted comprehensive plans, promote economic  
29 opportunity for all citizens of this state, especially for unemployed and for  
30 disadvantaged persons, promote the retention and expansion of existing  
31 businesses and recruitment of new businesses, recognize regional differences  
32

---

<sup>285</sup> *Hensley v. City of Woodinville*, Case No. 96-3-0031, FDO at 13 (Feb. 25, 1997).

1 impacting economic development opportunities, and encourage growth in areas  
2 experiencing insufficient economic growth, all within the capacities of the state's  
3 natural resources, public services, and public facilities.

4 Position of the Parties

5 Wold asserts their briefing in regards to Issues 6, 12, 14 and 25 *supra*, demonstrates that  
6 urban sprawl will result in a negative impact on economic development. They argue Goal 5  
7 instructs the City to “encourage economic development” and by encouraging residential,  
8 commercial, and industrial sprawl, the City harms the potential for economic development  
9 within the City and UGA.<sup>286</sup>

11  
12 The City disputes, once again, the allegation that its Plan will result in residential,  
13 commercial and industrial sprawl. The City points out that the Petitioners have not  
14 acknowledged the specific goals and policies for economic development in Chapter 9 of the  
15 Poulsbo Comprehensive Plan. The City argues that the Petitioners have not presented facts  
16 or legal argument that show that economic development will be harmed.<sup>287</sup>

17  
18 In their reply, Petitioners repeat their contention that one of the negative consequences of  
19 sprawl is harm to economic development, citing *Kaleas v. Normandy Park*<sup>288</sup> to support this  
20 assertion.<sup>289</sup>

21  
22 Board Discussion and Analysis

23 Petitioners rely primarily on the arguments they presented which contend the City of  
24 Poulsbo is encouraging sprawl by adopting a Plan that will require expansion of the UGA.  
25 However, as the Board has found *infra*, the City of Poulsbo is not encouraging sprawl or  
26 proposing to expand the UGA by the amendments under challenge in this proceeding.  
27 Thus, since Wold founds the argument on sprawl being detrimental to economic  
28  
29

30  
31 <sup>286</sup> Wold HOM Brief at 48.

32 <sup>287</sup> City Response Brief at 47-48.

<sup>288</sup> *Kaleas v Normandy Park*, CPSGMHB No. 05-3-0007c, FDO at 14 (July 19, 2005).

<sup>289</sup> Wold Reply Brief at 34.

1 development, without sprawl such an assertion cannot be supported. In addition, the Board  
2 notes Wold has offered little in the way of legal argument or facts that the 2009  
3 Comprehensive Plan economic development policies are likely to be thwarted by the  
4 asserted sprawl.<sup>290</sup>

5  
6 Conclusion

7 The Board concludes that Petitioners **failed to carry their burden of proof** in  
8 demonstrating Poulsbo's action in adoption Ordinance 2009-14 failed to be guided by RCW  
9 36.70A.020(5). Issue 38 is **dismissed**.  
10

11 **VII. ORDER**

12 Based upon review of the Petition for Review, the briefs and exhibits submitted by the  
13 parties, the Growth Management Act, prior Board Orders and case law, having considered  
14 the arguments of the parties, and having deliberated on the matter, the **Board finds and**  
15 **concludes the enactment of Ordinance 2009-14 by the City of Poulsbo complies with**  
16 **the goals and requirements of the GMA as denoted in the Petitioners' issue**  
17 **statements. Therefore, the case of *Wold, et al v. City of Poulsbo*, Case No. 10-3-0005c**  
18 **is DISMISSED.**  
19  
20

21 So ORDERED this 9<sup>th</sup> day of August, 2010.  
22

23  
24 \_\_\_\_\_  
Dave Earling, Board Member

25  
26 \_\_\_\_\_  
Margaret Pageler, Board Member

27  
28 Pursuant to RCW 36.70A.300 this is a final order of the Board.<sup>291</sup>  
29

30 \_\_\_\_\_  
31 <sup>290</sup> The citation given by the Wold in *Kaleas v Normandy Park*, regarding Goal 5 of the GMA, addresses  
32 economic development in the context of locating higher densities along transportation corridors or permitting  
mixed-use centers and their potential for encouraging economic development.

<sup>291</sup> Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this  
Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration,

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23 together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise  
24 delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy  
25 served on all other parties of record. Filing means actual receipt of the document at the Board office.  
26 RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a  
27 prerequisite for filing a petition for judicial review.  
28 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior  
29 Court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition  
30 in superior Court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and  
31 Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate Court and  
32 served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the  
final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail,  
but service on the Board means actual receipt of the document at the Board office within thirty days after  
service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic  
mail.  
Service. This Order was served on you the day it was deposited in the United States mail. RCW  
34.05.010(19)